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November 6, 2002

Steven K. Strickland
Vice President
Regulatory Affairs

Ms. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Tennessee Regulatory Authority (TRA) Docket No. 02- 01216
Entergy Arkansas, Inc. Application for Approval of Synthetic
Railcar Lease

Dear Chairman Kyle:

Attached are the original and thirteen copies of Entergy Arkansas, Inc.'s (EAI) Application and supporting Direct Testimonies of EAI witnesses Jeffrey G. Herndon and Steven C. McNeal filed this date in Docket No. 02-224-U before the Arkansas Public Service Commission (APSC) for APSC approval to enter into the proposed lease transaction.

The equity investors and the lenders participating in the transaction require APSC and TRA approval of the proposed lease transaction described in the Application. EAI will provide to the TRA a copy of the APSC Staff testimony and the final order issued by the APSC in this Docket via facsimile and over-night mail. In discussions with the APSC Staff, EAI has requested that a final order be issued by the APSC no later than November 22, 2002. The APSC Staff has indicated that it expects to be able to comply with this request in that time frame. EAI is requesting that the TRA also issue its final order approving or concurring with the APSC Order immediately following the action of the APSC to authorize EAI to enter into the proposed lease transaction. If it is the TRA's position that it does not have approving authority over such financing, a declarative statement of such a position would also be appreciated to clarify the TRA's interpretation of Tennessee statutes.

Attached is a check in the amount of \$25.00 for EAI's filing fee.

If you have any questions or need additional information, please do not hesitate to call me at (501) 377-4457 or Mr. Will Morgan at (501) 377-5489.

Sincerely,

A handwritten signature in dark ink, appearing to read "SKS", followed by a stylized flourish.

SKS/tj
Attachments

Nov 6 11 16 AM '02

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-224-U

APPLICATION FOR APPROVAL OF
SYNTHETIC RAILCAR LEASE

COMES NOW Entergy Arkansas, Inc. ("EAI" or the "Company"), and for its Application for Approval of Synthetic Railcar Lease (the "Application") states as follows:

1. This Application is filed pursuant to Arkansas Code Ann. § 23-3-104 and Sections 4 and 5 of the Rules of Practice and Procedure (the "RPP") of the Arkansas Public Service Commission ("APSC" or the "Commission").
2. EAI is a corporation organized under the laws of the State of Arkansas, with its principal place of business in Little Rock, Arkansas. EAI's property consists of facilities for the generation, transmission, and distribution of electric power and energy to the public and of other property necessary to repair, maintain, and operate those facilities. These facilities are located principally in the State of Arkansas. Certain distribution and transmission facilities for wholesale customers are located in a small portion of the State of Tennessee for retail customers situated wholly on the west side of the main channel of the

Mississippi River. A copy of the Company's Articles of Incorporation and amendments thereto are on file with the Commission and are incorporated herein by reference.

3. The subject matter of this Application is an anticipated lease to replace EAI's former lease for the aluminum railcars that are used to transport coal for use as fuel at the White Bluff Steam Electric Station and the Independence Steam Electric Station, which are co-owned by EAI and other providers of electric service. In Order No. 4, issued on June 7, 1995, in Docket No. 94-439-U, the Commission initially approved a "Hybrid Lease" to finance the railcars. The Hybrid Lease approved by Order No. 4 had an initial term of one year, beginning in October 1995, and was renewable for six consecutive one-year terms. EAI exercised all its options to extend the Hybrid Lease, but it has now expired, thus creating the need for new financing arrangements.

4. The Hybrid Lease approved in Docket No. 94-439-U was so named because while for accounting purposes, it was treated as an operating lease, for tax purposes EAI was treated as the owner of the equipment. Rent expense under the lease was composed of fixed rent, which corresponded to an amortization amount, plus variable rent, which corresponded to interest on the unamortized amount.

5. As described more fully in the Direct Testimonies of EAI witnesses Jeffrey G. Herndon and Steven C. McNeal, filed concurrently with this Application, EAI has been able to negotiate terms for a new Synthetic Lease which is similar to the Hybrid Lease approved by the Commission in Order No. 4.

As did the earlier lease, the new lease structure has characteristics associated with both operating and capital leases that will permit EAI to enjoy substantial cost savings. For financial accounting and reporting purposes, the Synthetic Lease will be structured so as to constitute an operating lease under SFAS No. 123, as amended. However, for all other purposes, including tax purposes, the Company will be considered to be the owner of the railcars. Certain of the Synthetic Lease terms may be amended or modified, from time to time, in order to comply with future accounting standards which may be applicable to the Synthetic Lease. A copy of a draft of the Synthetic Lease is attached to this Application as EAI Exhibit A.

6. The essential economic and financial terms of the Synthetic Lease have been agreed to by the parties involved in the anticipated transaction. Other terms and provisions of the Synthetic Lease are currently being negotiated, but the following description is a fair summarization. EAI proposes to enter into the Synthetic Lease with the BTM Capital Corporation. The equipment leased will be approximately 2,545 aluminum rotary dump high side gondola railcars with an estimated cost of approximately \$78,000,000. The Synthetic Lease is anticipated to commence in late November or early December 2002, and will have an initial term of five years, with EAI holding an option to renew the lease for two consecutive one-year terms.

7. EAI's rental payments will be made quarterly and will be based upon a Lease Amortization component, which is a fixed amount and corresponds to an amortization amount, and a Lease Rate component, which is a variable amount and corresponds to interest on the unamortized amount. During the

Initial Lease Term, the Lease Rate is expected to be equal to 3-month London Interbank Offered Rate plus 175 basis points and will be adjusted for EAI based on senior unsecured long-term debt ratings by Standard & Poor's Corporation and Moody's Investor Service, Inc. However, the Company expects to fix the variable amount of the Lease Rate over the entire term of the Synthetic Lease by means of a seven-year interest rate swap arrangement. The lease will be amortized over the Maximum Lease Term to a final lease balance of 55 percent. The terms of the lease are explained in more detail in the Direct Testimony of Mr. McNeal.

8. As described in the Direct Testimony of Mr. Herndon, the projected economic value of the Synthetic Lease to EAI and its customers is greater than that of the potential alternatives. Mr. Herndon compared the costs, beginning in 2002 and extending for 21 years, of purchasing the railcars, executing an Operating Lease, or executing a Synthetic Lease. In all the scenarios in which the railcar costs are reflected in the Company's rates, which was permitted for the Hybrid Lease by Order No. 2 and Order No. 4 in Docket No. 94-439-U, the Synthetic Lease is projected to produce net present value savings to ratepayers of approximately \$24 million, as compared to the purchase option, and approximately \$19 million as compared to an Operating Lease.

9. Due to the similarity in the structure of the Hybrid Lease and the Synthetic Lease, the Company intends to account for the rental payments under the Synthetic Lease as fuel expense, which was permitted for the Hybrid Lease under Order No. 2 and Order No. 4 in Docket No. 94-439-U. Accordingly, the

proposed transaction has no impact on EAI's balance sheet and, therefore, no financial statements are being filed pursuant to Rule 5.03(b).

10. Closing of the anticipated transaction is scheduled to take place in late November or early December 2002. As a result, EAI requests the Commission expedite action on this Application and enter a final order thereon on or before November 22, 2002 so that EAI's customers and its co-owners in the coal plants can begin to realize the fuel cost efficiencies associated with the use of the new financing arrangements at the earliest possible date. Because the Company serves some customers in Tennessee, a similar request is being made to the Tennessee Regulatory Authority.

11. EAI requests that the following individuals be included on the service list in this proceeding:

Steven K. Strickland, Vice President
Regulatory Affairs - Arkansas
Entergy Arkansas, Inc.
P. O. Box 551
Little Rock, AR 72203
Telephone: (501) 377-4457

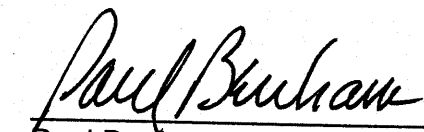
Paul Benham
Friday, Eldredge & Clark
400 W. Capitol Avenue
Little Rock, AR 72201
Telephone: (501) 370-1517

WHEREFORE, EAI prays that the Commission issue an order approving the proposed Synthetic Railcar Lease described herein on or before November 22, 2002; authorizing EAI to account for the associated costs as allowed by Orders No. 2 and 4 in Docket No. 94-439-U; and granting EAI all other necessary and appropriate relief.

Respectfully submitted,

ENTERGY ARKANSAS, INC.

By:



Paul Benham
Friday, Eldredge & Clark
400 W. Capitol Avenue
Little Rock, Arkansas 72201
Telephone; (501) 370-1517

ATTORNEY FOR ENTERGY ARKANSAS, INC.

Date: November 6th, 2002

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-____-U

EAI EXHIBIT A
SYNTHETIC LEASE AGREEMENT

MASTER LEASE AND SECURITY AGREEMENT

Dated as of _____, 2002

between

BTM CAPITAL CORPORATION

as Lessor

and

ENTERGY ARKANSAS, INC.

as Lessee

This Lease has been executed in several counterparts. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no lien on this Lease may be created through the transfer or possession of any counterpart other than the original executed counterpart containing the receipt therefor executed by the Lessor immediately following the signature page hereof.

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Appendix 1
Appendix 2

Definitions and Interpretation
Calculation of Base Rent

EXHIBITS

Exhibit A
Exhibit B
Exhibit C

Form of Funding Request
Form of Lessee's Certificate
Form of Lease Supplement

MASTER LEASE AND SECURITY AGREEMENT

THIS MASTER LEASE AND SECURITY AGREEMENT (this "Lease"), dated as of _____, 2002, is entered into between BTM Capital Corporation, a Delaware corporation, as the Lessor, and Entergy Arkansas, Inc., an Arkansas corporation, as the Lessee.

W I T N E S S E T H:

WHEREAS, the Lessor and the Lessee desire to have the Lessor acquire certain assets and lease such assets to the Lessee pursuant to this Lease;

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions; Interpretation. Capitalized terms used but not otherwise defined in this Lease have the respective meanings specified in Appendix 1; and the rules of interpretation set forth in Appendix 1 shall apply to this Lease.

ARTICLE II

PURCHASE AND LEASE

2.1 Acquisition and Lease of Assets.

(a) Equipment. Subject to the terms and conditions of this Lease, (i) on each Acquisition Date for any Equipment the Lessor shall purchase such Equipment pursuant to the terms hereof and (ii) the Lessor shall lease to the Lessee and the Lessee shall lease from the Lessor, such Equipment for the Lease Term applicable thereto.

(b) Limitations on Leased Assets. Notwithstanding any other provision hereof, the Lessor shall not acquire any Equipment:

- (i) unless such Equipment is a Permitted Asset; or
- (ii) if, after giving effect thereto, the Acquisition Cost for all Equipment acquired by the Lessor would exceed the Total Commitment.

2.2 Acceptance Procedure. The Lessee hereby agrees that the execution and delivery by the Lessee on each Acquisition Date of an appropriately completed Lease Supplement shall, without further act, constitute the unconditional and irrevocable acceptance by the Lessee of all of the Equipment which is the subject of such Lease Supplement for all purposes of this Lease and the other Operative Documents on the terms set forth therein and herein, and that all of such Equipment shall be deemed to be included in the leasehold estate of this Lease and shall be subject to the terms and conditions of this Lease as of the applicable Acquisition Date.

2.3 Lease Term. This Lease shall be in full force and effect on the Closing Date. The Lease Term for any Equipment shall commence on the Acquisition Date for such Equipment and shall end on the Expiration Date for such Equipment.

2.4 End of Term Options. Unless the Lease Term for any Equipment is renewed pursuant to Article XXI, at or before the Expiration Date for such Leased Asset the Lessee must elect either (i) the Purchase Option pursuant to Article XX or (ii) the Remarketing Option pursuant to Article XXII, and if it fails to make such election in accordance with the terms hereof, it shall automatically and irrevocably be deemed to have elected the Purchase Option for such Equipment and to have specified the Expiration Date for such Equipment as the date on which such purchase will be made.

2.5 Title. All Equipment is leased to the Lessee without, except as expressly set forth herein, any representation or warranty, express or implied, by the Lessor and subject to the rights of parties in possession, the existing state of title (including, without limitation, Permitted Liens other than Lessor Liens) and all applicable Requirements of Law. The Lessee shall in no event have any recourse against the Lessor for any defect in or exception to title to any Equipment other than to the extent resulting from Lessor Liens.

ARTICLE III

FUNDINGS

3.1 Lessor Commitment. Subject to the terms and conditions of this Lease, the Lessor shall, upon the written request of the Lessee from time to time on or before the Commitment Termination Date, make Fundings on Funding Dates for the purpose of financing the acquisition of Equipment. The Lessor shall not make more than one Funding with respect to any Leased Asset unless otherwise agreed by the Lessor with respect to such Leased Asset. Notwithstanding anything to the contrary contained herein, the Lessor shall not be obligated to make any Funding if, after giving effect thereto, the aggregate principal amount of Fundings with respect to all Leased Assets would exceed the Total Commitment.

3.2 Procedures for Fundings.

(a) With respect to each Funding, the Lessee shall give the Lessor and the Collateral Agent a Funding Request therefor not later than 1:00 p.m., New York City time, three (3) Business Days prior to the date of the proposed Funding, specifying: (i) the proposed funding date (the "Funding Date"), (ii) the amount of Funding requested, which shall be an amount not less than \$5,000,000 and (iii) the Leased Asset to which such Funding is being allocated.

(b) Notwithstanding anything to the contrary contained herein, there may not be more than two Funding Dates in any calendar month.

(c) Fundings shall be made solely to pay Acquisition Costs of Leased Assets.

(d) All remittances made by the Lessor for any Funding shall be made through the Collateral Agent on the applicable Funding Date in immediately available federal funds by wire transfer to the account or accounts designated by the Lessee.

3.3 Source of Fundings. The Lessor intends to borrow Loans under the Loan Agreements in an amount of up to 97% of the Fundings. Notwithstanding anything to the contrary contained herein, the Lessor shall not be obligated to make any Funding if and to the extent that the Conduit (or, if the Conduit

elects not to fund any requested Loan, any BNS Bank) or any DVB Bank has failed to make a Loan to the Lessor in an amount equal to such Person's share of such Funding.

ARTICLE IV

CONDITIONS PRECEDENT TO CLOSING DATE, ACQUISITION DATES AND FUNDINGS

4.1 Closing Date. The closing date (the "Closing Date") shall occur on the earliest date on which the following conditions precedent shall have been satisfied or waived:

- (a) Master Lease. This Lease shall have been duly executed and delivered by the parties hereto.
 - (b) Other Documents. Each of the other Operative Documents shall have been duly executed and delivered by each party thereto and all conditions precedent thereunder shall have been satisfied or waived.
 - (c) Lessee's Certificate. The Lessor shall have received a Lessee's Certificate, in substantially the form of Exhibit B, stating that (i) each representation and warranty of the Lessee contained in each Operative Document to which it is a party is true and correct in all material respects on and as of the Closing Date; (ii) no Default or Event of Default has occurred and is continuing; and (iii) each Operative Document to which the Lessee is a party is in full force and effect with respect to it.
 - (d) Resolutions and Incumbency Certificate, etc. of Lessee. The Lessee shall have delivered to the Lessor (i) a certificate of its Secretary or an Assistant Secretary attaching and certifying as to (A) the resolutions of its Board of Directors duly authorizing the execution, delivery and performance by it of each Operative Document to which it is or will be a party, (B) its certificate or articles of incorporation and by-laws, and (C) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Documents to which it is a party and (ii) a certificate of good standing with respect to it issued by the Secretary of State of the State of its incorporation.
 - (e) Opinions of Counsel. [Each of] Thelen Reid & Priest LLP, New York counsel to the Lessee [and _____, [internal] [Arkansas] counsel to the Lessee], shall have issued to the Lessor, the Collateral Agent, the Conduit, the BNS Agent, the Liquidity Agent and the DVB Agent an opinion in form and substance satisfactory to each such party.
 - (f) Fee Letters. Each Fee Letter shall have been duly executed and delivered by the parties thereto, and the Lessee shall pay the fees payable thereunder on the Closing Date.
- 4.2 Acquisition Date Conditions. The occurrence of the Acquisition Date with respect to each Leased Asset is subject to the occurrence of the Closing Date and the satisfaction or waiver of the following conditions precedent:
- (a) Lease Supplement. The Lease Supplement relating to such Leased Asset shall have been duly executed and delivered by the parties hereto.
 - (b) Appraisal. The Lessor shall have received an Appraisal of such Leased Asset in form and substance satisfactory to the Lessor and the Collateral Agent and, if such Appraisal shows that the Fair Market Sales Value of such Leased Asset as of the fifth, sixth and seventh anniversaries of this Lease will be less than the Acquisition Cost for such Leased Asset, Lessor and the Collateral Agent shall

have determined the amount of Periodic Amortization for such Leased Asset, which shall be an amount sufficient to reduce the Lease Balance for such Leased Asset over the Lease Term applicable thereto (including any Renewal Terms) so that, as of the fifth, sixth, and seventh anniversaries of this Lease, the Lease Balance for such Leased Asset will not exceed the Fair Market Sales Value as of such dates.

(c) Filings. The Operative Documents (or memoranda thereof), any supplements thereto and any UCC financing statements shall have been recorded, registered and filed, if necessary, in such manner as to perfect and protect the Lessor's interest in such Leased Asset including, without limitation, the filing of the Memorandum of Lease with the Surface Transportation Board.

(d) Taxes, Etc. All taxes, assessments, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Documents and the acquisition of such Leased Asset shall have been paid or provisions for such payment shall have been made to the satisfaction of the Lessor and the Collateral Agent.

(e) Governmental Actions. All Governmental Actions necessary in connection with the acquisition of such Leased Asset by the Lessor shall have been obtained or made and be in full force and effect.

(f) Requirements of Law. In the opinion of the Lessor and the Collateral Agent and their respective counsel, the acquisition and ownership of such Leased Asset as contemplated by the Operative Documents will not violate in any material respect any Requirements of Law and will not subject the Lessor to any material adverse regulatory prohibitions or constraints.

(g) Lessee's Certificate. Each of the Lessor and the Collateral Agent shall have received a Lessee's Certificate, in substantially the form of Exhibit B, dated as of such Acquisition Date.

(h) Insurance. Each of the Lessor and the Collateral Agent shall have received satisfactory evidence that the insurance required to be maintained pursuant to the Operative Documents with respect to such Leased Asset is in full force and effect.

(i) Additional Documents. Each of the Lessor and the Collateral Agent shall have received such additional documents as it may reasonably request.

4.3 Conditions Precedent to Each Funding. The obligations of the Lessor to make a Funding on a Funding Date, including the Funding occurring on any Acquisition Date, is subject to satisfaction or waiver of the following conditions precedent:

(a) Funding Request. Each of the Lessor and the Collateral Agent shall have received a fully executed counterpart of the applicable Funding Request, executed by the Lessee.

(b) Accuracy of Representations and Warranties. On the applicable Funding Date the representations and warranties of the Lessee contained herein and in each of the other Operative Documents to which it is a party shall each be true and correct in all material respects as though made on and as of such date, except to the extent such representations or warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct on and as of such earlier date.

(c) No Default. There shall not have occurred and be continuing any Default or Event of Default and no Default or Event of Default will have occurred after giving effect to the making of the Funding requested by such Funding Request.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

5.1 Representations of the Lessor. The Lessor represents and warrants to the Lessee that:

(a) ERISA. The Lessor is not and will not be making its Fundings hereunder, and is not performing its obligations under the Operative Documents, with the assets of an "employee benefit plan" (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA, or a "plan" (as defined in Section 4975(e)(1) of the Code).

(b) Status. The Lessor is a Delaware corporation.

(c) Power and Authority. The Lessor has the power and authority to execute, deliver and perform the Operative Documents to which it is or will be a party and has taken all necessary action to authorize the execution, delivery and performance of the Operative Documents to which it is a party and has duly executed and delivered each Operative Document required to be executed and delivered by it and, assuming the due authorization, execution and delivery thereof on the part of each other party thereto, each such Operative Document constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by insolvency, bankruptcy, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights or by general equitable principles.

(d) Investment Company Act. The Lessor is not required to be registered as an "investment company" under the Investment Company Act of 1940, as amended.

5.2 Representations of the Lessee. The Lessee represents and warrants to the Lessor that:

(a) Corporate Status. The Lessee (i) is a duly organized and validly existing corporation in good standing under the laws of the State of Arkansas and (ii) has duly qualified and is authorized to do business and is in good standing in each jurisdiction in which the nature of its business makes such qualification necessary.

(b) Corporate Power and Authority. The Lessee has the power and authority to execute, deliver and perform the Operative Documents to which it is or will be a party and has taken all necessary action to authorize the execution, delivery and performance of the Operative Documents to which it is a party and has duly executed and delivered each Operative Document required to be executed and delivered by it and, assuming the due authorization, execution and delivery thereof on the part of each other party thereto, each such Operative Document constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by insolvency, bankruptcy, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights or by general equitable principles.

(c) No Violation. Neither the execution, delivery and performance by the Lessee of the Operative Documents to which it is or will be a party (i) will result in a violation by the Lessee of any applicable provision of any law, rule, regulation, order, writ, injunction or decree of any court or governmental instrumentality having jurisdiction over the Lessee or any Leased Asset, (ii) will result in any breach which would constitute a default under, or (other than pursuant to the Operative Documents) result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the assets of the Lessee pursuant to the terms of, any indenture, loan agreement, lease or other agreement to which the Lessee is a party or by which it or any of its assets is bound or to which it may be

subject (other than Permitted Liens), or (iii) will violate any provision of the certificate or articles of incorporation or by-laws of the Lessee.

(d) Governmental Actions. No Governmental Action by any Governmental Authority having jurisdiction over the Lessee or any Leased Asset is required to authorize or is required in connection with the execution, delivery and performance by the Lessee of any Operative Document to which it is a party, other than (i) _____ and (ii) the filing of the Memorandum of Lease with the Surface Transportation Board.

(e) Financial Condition; No Material Adverse Change. The audited consolidated balance sheets of the Lessee and its Subsidiaries as of December 31, 2001 and the related statements of income and retained earnings and cash flows for the fiscal year then ended, copies of which have been furnished to the Lessor, the Conduit, the BNS Banks and the DVB Banks, are complete and correct and fairly present on a consolidated basis the assets, liabilities and financial position of the Lessee and its Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP. Since December 31, 2001, there has been no Material Adverse Change.

(f) Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened (i) which could result in a Material Adverse Change or (ii) which question the validity or enforceability of the Operative Documents or the rights or remedies of the Lessor or the Collateral Agent thereunder.

(g) Liens. No mortgage, deed of trust, or other Lien which now covers or affects any property or interest therein of the Lessee, will attach to the Equipment or any Item of the Equipment, the proceeds thereof or this Lease, or in any manner affect or adversely the Lessor's or the Collateral Agent's rights and security interest therein.

(h) Licenses, Etc. The Lessee holds all licenses, certificates and permits from Governmental Authorities necessary to use and operate the Equipment in accordance with the provisions of this Lease.

(i) 35 Act. (i) None of the Lessor, any other Lender Party nor any Affiliate thereof shall, by reason of (i) the ownership of the Equipment or any part thereof by the Lessor, (ii) the lease of the Equipment to the Lessee under this Lease or (iii) any other transaction contemplated by this Lease or any other document executed in connection therewith, be deemed by any Governmental Authority having jurisdiction to be, or be subject to regulation as, an "electric utility", a "gas utility" or a "public utility" or a "public utility holding company" or any "affiliate," of a "public utility holding company," under the 35 Act or under any other existing law, rule or regulation (or applicable authoritative interpretation thereof) of the federal government of the United States of America, of the Lessee's state of incorporation, or any subdivision thereof.

(ii) None of the Lessor nor any other Lender Party shall be subject to any liabilities, duties or obligations under the 35 Act as a result of the transaction contemplated hereby.

(j) Interstate Commerce Act. The Lessee is not a "common carrier," as such term is defined in the Interstate Commerce Act, as amended.

(k) Security Interest. Except for (A) the filing for recording pursuant to 49 CFR 1033.1 of the Memorandum of Lease and (B) the filing of UCC financing statements (and continuation statements at periodic intervals) with respect to the security and other interests created by such documents under the Uniform Commercial Code of Arkansas, no further action, including any filing or recording of any document (including any other UCC financing statement), is necessary or advisable in order to establish and perfect the Lessor's title to and interest in the Equipment as against the Lessee and any third parties in any applicable jurisdictions in the United States.

(l) Disclosure. The Disclosure Documents and the Equipment Documents, taken as a whole, are true and correct in all material respects and do not omit any information necessary to make the information provided, in light of the circumstances under which such information was provided, not materially misleading.

(m) ERISA. No ERISA Event has occurred or, to the best of the Lessee's knowledge, is reasonably expected to occur with respect to any Plan of the Lessee or any of its ERISA Affiliates which would result in a material liability to the Lessee. Since the date of the most recent Schedule B (Actuarial Information) to the annual report of Plans maintained by the Lessee (Form 5500 Series), if any, there has been no material adverse change in the funding status of the Plans referred to therein and, to the best of the Lessee's knowledge, no "prohibited transaction" has occurred with respect thereto which is reasonably expected to result in a material liability to the Lessee. Neither the Lessee nor any of its ERISA Affiliates has incurred nor, to the best of the Lessee's knowledge, reasonably expects to incur any material withdrawal liability under ERISA to any Multiemployer Plan.

(n) Investment Company Act. The Lessee is not an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

(o) Taxes. All United States federal income tax returns and all other material tax returns which are required to have been filed have been or will be filed by or on behalf of the Lessee by the respective due dates, including extensions, and all taxes due with respect to the Lessee shown on such returns or pursuant to any assessment received by the Lessee have been or will be paid or are being contested in good faith by the Lessee by appropriate procedures. The charges, accruals and reserves on the books of the Lessee in respect of taxes or other governmental charges are, in the opinion of the Lessee, adequate.

(p) Insurance. The Lessee carries insurance with reputable insurers in respect of its material assets, in such manner, in such amounts and against such risks as is customarily maintained by other Persons of similar size engaged in similar business.

(q) Compliance with Laws. The Lessee is in compliance with all Applicable Laws (including all Environmental Laws) other than those the non-compliance with which could not result in a Material Adverse Change.

(r) Obligations. The obligations of the Lessee hereunder and under the other Operative Documents to which it is a party (i) rank at least pari passu in right of payment with all other unsecured and unsubordinated Indebtedness of the Lessee and (ii) constitute "senior debt" for purposes of any subordinated Indebtedness of the Lessee.

(s) Use of Fundings. No part of any Funding will be used directly or indirectly for the purpose of purchasing or carrying, or for payment in full or in part of debt that was incurred for the

purposes of purchasing or carrying, any margin security as such term is defined in Regulation U of the Board of Governors of the Federal Reserve System.

(t) Solvency. The Lessee is Solvent.

5.3 Representations of the Lessee with Respect to Each Acquisition. The Lessee represents and warrants to the Lessor as of the Acquisition Date for any Equipment that such Equipment and the contemplated use thereof by the Lessee and its agents, assignees, employees, lessees, licensees and tenants will comply in all material respects with all Requirements of Law and Insurance Requirements, except for such Requirements of Law as the Lessee shall be contesting as permitted hereby. There is no action, suit or proceeding pending or, to the best of the Lessee's knowledge, threatened with respect to the Lessee, its Affiliates or such Equipment, in which there is a reasonable possibility of an adverse determination and which, if adversely determined, could reasonably be expected to have a material adverse effect on the title to, or the use, operation or value of, such Equipment. No fire or other casualty with respect to such Equipment has occurred which fire or other casualty has had a material adverse effect on the value or condition of such Equipment. All material licenses, approvals, authorizations, consents and permits required for the use and operation of such Equipment have either been obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, or will be obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, at or before the time required by Applicable Law, except in each case for such licenses, approvals, authorizations, consents and permits the absence of which would not have a material adverse effect on the title to, or the use, operation or value of such Equipment.

ARTICLE VI

PAYMENT OF RENT

6.1 Rent. The Lessee shall pay Base Rent in arrears on each Leased Asset on each Payment Date during the Lease Term for such Leased Asset and on any date on which this Lease shall terminate as to such Leased Assets. In addition, if all or any portion of the Lease Balance of any Leased Asset is paid on any date other than a Payment Date, then the Lessee shall also pay Base Rent on such Leased Asset on such date in an amount equal to the accrued Base Rent on the Lease Balance so paid to the date of such payment. Base Rent shall be calculated as provided in Appendix 2.

6.2 Supplemental Rent.

(a) The Lessee shall pay to the Lessor any and all Supplemental Rent as the same shall become due and payable. The Lessee shall pay to the Lessor, as Supplemental Rent, among other things, (i) amounts required to reimburse the Lessor for all of its obligations, costs and expenses (not otherwise included in Base Rent or Lease Balance) incurred in acquiring, owning and financing the Leased Assets (including all amounts owing under the funding losses, tax gross-up, increased costs and capital adequacy provisions of the Loan Agreements and under the tax gross-up provisions of the Interest Rate Hedge) and (ii) on demand, interest at the applicable Overdue Rate on any amount payable by the Lessee hereunder or under any other Operative Document (including Base Rent, Lease Balance or Guaranteed Residual Value) not paid when due for the period for which the same shall be overdue until the same shall be paid. The expiration or other termination of the Lessee's obligations to pay Base Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this Lease, in the event of any failure on the part of the Lessee to pay and discharge any Supplemental Rent as and when due, the Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added under any agreement with a

third party for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent.

(b) If all or any portion of the Lease Balance of any Leased Asset shall be paid prior to _____, 2009 (other than through payments of Periodic Amortization included in Base Rent), then on the date of such payment (or as promptly thereafter as practicable) (i) the Lessor shall reduce the notional amount of the Interest Rate Hedge by an amount equal to such payment and (ii) the Lessee shall pay to the Lessor the amount of any cost, premium, penalty or expense payable by the Lessor to the Swap Counterparty in connection with such reduction. In addition, if and to the extent that any Loan bears interest at a rate based upon the Alternate Base Rate plus the ABR Margin (as a result of the Eurodollar Rate being illegal or unavailable), the Lessee will pay to the Lessor, as and when such interest is payable, an amount equal to the amount, if any, by which such interest exceeds the interest that would have accrued on such Loan if such interest had been based upon the floating rate payable by the Swap Counterparty to the Lessor under the Interest Rate Hedge.

6.3 Payment of Rent. Rent shall be paid absolutely net to the Lessor, so that this Lease shall yield to the Lessor the full amount thereof, without setoff, deduction or reduction. Neither the Lessee's inability or failure to take possession of all or any portion of any Leased Asset when delivered by the Lessor, whether or not attributable to any act or omission of the Lessee or any act or omission of the Lessor, or for any other reason whatsoever, shall delay or otherwise affect the Lessee's obligation to pay Rent for such Leased Asset in accordance with the terms of this Lease.

6.4 Method of Payment. Each payment of Rent or any other amount due hereunder shall be made by the Lessee to the Collateral Account in Dollars and in immediately available funds not later than 12:00 p.m., New York City time, on the scheduled date when such payment shall be due, unless such scheduled date shall not be a Business Day, in which case such payment shall be made on the next succeeding Business Day. Payments received after 12:00 p.m., New York City time, on any day shall be deemed received on the next succeeding Business Day.

6.5 Lessee's Rights. If the Lessee is required to reimburse the Lessor pursuant to clause (i) of the second sentence of Section 6.2(a) for any tax gross-up, increased costs or capital adequacy amounts owing to any Lender Party, then the Lessee may, by notice to the Lessor, require the Lessor to exercise any rights available to it under any Loan Agreement or the Interest Rate Hedge to replace such Lender Party with a new Lender Party identified by the Lessee and reasonably acceptable to the Collateral Agent.

ARTICLE VII

QUIET ENJOYMENT

7.1 Quiet Enjoyment. Subject to Sections 2.5 and 14.3, and subject to the rights of the Lessor contained herein and the other terms of the Operative Documents to which the Lessee is a party, the Lessee shall peaceably and quietly have, hold and enjoy each Leased Asset for the Lease Term applicable thereto, free of any claim or other action by the Lessor or anyone claiming by, through or under the Lessor (other than the Lessee) with respect to any matters arising from and after the Acquisition Date for such Leased Asset. Such right of quiet enjoyment is independent of, and shall not affect the Lessor's rights otherwise to initiate legal action to enforce, the obligations of the Lessee under this Lease.

ARTICLE IX

SUBLEASES

9.1 Subletting. The Lessee may not, without the consent of the Collateral Agent, sublease any Leased Asset or any portion thereof to any Person, except that the Lessee may sublease all or a portion of any Leased Asset to any Person, provided that no Event of Default shall have occurred and be continuing on the date on which such sublease commences or would result therefrom. No sublease or other relinquishment of possession of such Leased Asset shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder and the Lessee shall remain directly and primarily liable under this Lease as to such Leased Asset, or portion thereof, so sublet. Any sublease of such Leased Asset shall expressly be made subject to and subordinate to this Lease and to the rights of the Lessor hereunder and shall have a scheduled expiration date that occurs on or before the Expiration Date for such Leased Asset.

ARTICLE X

LESSEE ACKNOWLEDGMENTS

10.1 CONDITION OF THE LEASED ASSETS. THE LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING EACH LEASED ASSET "AS IS" WITHOUT, EXCEPT AS EXPRESSLY OTHERWISE PROVIDED HEREIN, REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY THE LESSOR AND SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW AND (D) VIOLATIONS OF REQUIREMENTS OF LAW WHICH MAY EXIST ON THE DATE HEREOF OR AT ANY TIME THEREAFTER. THE LESSOR HAS NOT MADE, EXCEPT AS EXPRESSLY OTHERWISE PROVIDED HEREIN, AND SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) AND SHALL NOT BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE (OTHER THAN FOR LESSOR LIENS), VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, OR FITNESS FOR USE OF ANY LEASED ASSET (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY LEASED ASSET (OR ANY PART THEREOF) OR ANY MODIFICATION THERETO AND THE LESSOR SHALL NOT BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN (OTHER THAN FOR LESSOR LIENS) OR THE FAILURE OF ANY LEASED ASSET, OR ANY PART THEREOF, TO COMPLY WITH ANY REQUIREMENTS OF LAW.

10.2 Risk of Loss. During the Lease Term for any Leased Asset, the risk of loss of or decrease in the enjoyment and beneficial use of such Leased Asset as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by the Lessee, and the Lessor shall in no event be answerable or accountable therefor.

ARTICLE XI

POSSESSION AND USE, ETC.

11.1 Use of Equipment; Compliance with Laws. The Lessee agrees that the Equipment will be used and operated solely in the conduct of its business or as otherwise permitted by Article IX and Article XX hereof and in compliance with any and all Insurance Requirements and with all Requirements

of Law, including, without limitation, the Association of American Railroads Interchange Rules, the rules and regulations of the Federal Railroad Administration, the United States Department of Transportation and the Surface Transportation Board, and Environmental Laws, noise and pollution laws (including notifications and reports); provided, however, that the Lessee shall not be obligated to so comply with laws, rules or regulations (i) whose application or validity is being contested in accordance with the terms hereof relating to permitted contests, (ii) compliance with which shall have been excused or exempted by a nonconforming use permit, waiver, extension or forbearance exempting the Lessee from such laws, rules or regulations, (iii) failure to comply with which shall impose no risk of civil or criminal liability on Lessor or any Lender Party or (iv) if in the opinion of counsel to the Collateral Agent, failure of compliance would impose no additional liability on Lessor or any Lender Party or material adverse consequences to Lessor's rights under this Lease or its interest in the Equipment or any Lender Party's interest therein. Subject to the foregoing provisions, Lessee shall, at its sole cost and expense, procure and maintain in effect all licenses, registrations, certificates, permits, approvals and consents required by applicable Requirements of Law in connection with the ownership, delivery, installation, use and operation of each Item of Equipment and with the remarketing thereof pursuant to Article XXII, including, without limitation, those required by Environmental Laws, noise and pollution laws (including notifications and reports). The Equipment shall in no event be used or located outside of the continental limits of the United States. The Lessee shall use and operate the Equipment or cause it to be used and operated only by personnel authorized by the Lessee, and the Lessee shall use every reasonable precaution to prevent loss or damage to each Item of Equipment from fire and other hazards. The Lessee shall not use or permit any Item of Equipment to be used for the transportation or storage of any substance other than coal, and in particular shall not use or permit any Item of Equipment to be used for the transportation or storage of any substance which is specifically listed or designated as "oil" under Section 1001 of the Oil Pollution Act of 1990 and which is subject to the provisions of that Act or which is categorized as, or required to be labeled as, "poison" or "poisonous," "explosive" or "radioactive" (or any categories or labels substituted for such categories or labels as in effect on the day hereof) under 49 CFR 171 or other applicable Federal rules in effect from time to time regulating the transportation of hazardous or toxic materials, including (without limitation) nuclear fuels, radioactive products, asbestos, PCB's or nuclear wastes, nor will Lessee permit the Equipment to engage in any unlawful trade or violate any law or carry any unlawful cargo that will expose the Equipment to penalty, forfeiture or capture, nor will Lessee do, or suffer or permit to be done, any act which can or may cause Lessor to become subject to Part III of the Interstate Commerce Act (49 U.S.C. 901 et seq.).

11.2 Charges. The Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of each Leased Asset as contemplated by this Lease.

11.3 Impositions. The Lessee shall pay, or cause to be paid, all Impositions. The Lessee shall be entitled to receive any credit or refund with respect to any Imposition paid by the Lessee with respect to any Leased Asset prior to the Expiration Date for such Leased Asset with respect to periods after such Expiration Date and the amount of any credit or refund actually received by the Lessor on account of any such Imposition, net of the costs and expenses reasonably incurred by the Lessor in obtaining such credit or refund, shall be promptly paid over to the Lessee.

ARTICLE XII

MAINTENANCE AND REPAIR; SURRENDER

12.1 Maintenance and Repair of Equipment.

(a) The Lessee agrees, at its sole cost and expense, to keep, repair, maintain and preserve the Equipment in good order and operating condition, and in compliance with such maintenance

and repair standards, ordinary wear and tear excepted, as are set forth in the applicable Association of American Railroad and Federal Railroad Administration and National Transportation Agency rules and regulations and as otherwise may be required to enforce warranty claims against each vendor and manufacturer of each Item of Equipment, and (except as otherwise permitted by Section 11.1) in compliance with all Requirements of Law applicable to the maintenance and condition of the Equipment, including, without limitation, Environmental Laws, noise and pollution laws (including notifications and reports), and suitable for interchange under the rules of the Association of American Railroads, to the extent the Equipment was originally designed and approved, and with all lawful rules of the United States Department of Transportation, the Surface Transportation Board and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation, maintenance or use of the Equipment; and in the event that such laws or rules require any alteration, replacement or addition of or to any portion of the Equipment, the Lessee will conform therewith at its own expense. The Lessee agrees to prepare and deliver to the Lessor and the Collateral Agent within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Collateral Agent) any and all reports (other than income tax returns) to be filed by the Lessor or the Collateral Agent with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Collateral Agent of the Equipment or the leasing thereof to the Lessee. The Lessee agrees to maintain all records, logs and other materials required by the Association of American Railroads or the Department of Transportation, or any other governmental authority having jurisdiction over the Items of Equipment or the Lessee, to be maintained in respect of each Item of Equipment. The Lessee shall, at its own cost and expense, supply the necessary power and other items required in the operation of the Equipment. The Lessee hereby waives any right now and hereafter conferred by law to make repairs on the Equipment at the expense of the Lessor.

(b) The Lessor shall under no circumstances be required to make any replacements, alterations or renewals of any nature or description to the Equipment or make any expenditure whatsoever in connection with this Lease (other than for Fundings made in accordance with and pursuant to the terms of this Lease). The Lessor shall not be required to maintain, repair or rebuild all or any part of the Equipment, and the Lessee waives any right to (i) require the Lessor to maintain, repair, or rebuild all or any part of the Equipment, or (ii) make repairs at the expense of the Lessor pursuant to any Requirement of Law, Insurance Requirement, contract, agreement, or covenant, condition or restriction in effect at any time.

12.2 Surrender. The Lessee shall, upon the expiration or earlier termination of this Lease with respect to any Leased Asset, vacate and surrender such Leased Asset to the Lessor in its then-current condition, subject to the Lessee's obligations under Sections 11.1, 12.1, 13.1, 14.1, 17.1(d) and 22.1, unless the Lessee has purchased such Leased Asset from the Lessor as provided herein.

ARTICLE XIII

MODIFICATIONS, ETC.

13.1 Replacements; Alterations and Modifications. In case any Item of Equipment (or any equipment, part or appliance therein) is required to be altered, added to, replaced or modified in order to comply with any Requirements of Law ("Required Alteration") pursuant to Sections 11.1 or 12.1, Lessee agrees to make such Required Alteration at its own expense and the same shall immediately be and become the property of Lessor and subject to the terms of this Lease. Lessee may make any optional alteration to any Item of Equipment ("Optional Alteration") provided such Optional Alteration does not impair the value, use or remaining useful life of such Item of Equipment. In the event such Optional Alteration is readily removable without causing material damage to the Item of Equipment, and is not a part, item of equipment or appliance which replaces any part, item of equipment or appliance originally

incorporated or installed in or attached to such Item of Equipment on the Acquisition Date therefor or any part, item of equipment or appliance in replacement of or substitution for any such original part, item of equipment or appliance, any such Optional Alteration shall be and remain the property of Lessee. To the extent such Optional Alteration is not readily removable without causing material damage to the Item of Equipment to which such Optional Alteration has been made, or is a part, item of equipment or appliance which replaces any part, item of equipment or appliance originally incorporated or installed in or attached to such Item of Equipment on the Acquisition Date therefor or any part, item of equipment or appliance in replacement of or substitution for any such original part, item of equipment or appliance, the same shall immediately be and become the property of the Lessor and subject to the terms of this Lease. Lessee agrees that, within thirty (30) days after the close of any calendar quarter in which Lessee has made any Required Alterations, Lessee will give written notice thereof to the Lessor and the Collateral Agent describing, in reasonable detail, the Required Alterations and specifying the cost thereof with respect to each Item of Equipment and the date or dates when made. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to its obligation to maintain and keep the Equipment in good order, operating condition and repair under Section 12.1 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor. Except as required or permitted by the provisions of this Section 13.1, the Lessee shall not modify an Item of Equipment without the prior written authority and approval of the Collateral Agent.

ARTICLE XIV

WARRANT OF TITLE; EQUIPMENT TO REMAIN PERSONAL PROPERTY; IDENTIFICATION AND INSPECTION

14.1 Warrant of Title.

(a) Except as expressly provided in the Operative Documents or as permitted in connection with the exercise of any of its rights or remedies thereunder, the Lessor will not sell, transfer or otherwise dispose of any Leased Asset prior to the Expiration Date applicable thereto. Except as expressly provided in Section 13.1 or Article XXII, the Lessee will not sell, transfer or otherwise dispose of any Leased Asset.

(b) Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to (i) the Equipment or any Item thereof, Lessor's title thereto or any interest therein, or (ii) this Lease or any of Lessor's interests thereunder (including Rent), except in the case of either clause (i) or (ii), Permitted Liens. Lessee, at its sole cost and expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep this Lease and the Equipment free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to the Collateral Agent, any such Lien not excepted above if the same shall arise at any time. Lessee will notify Lessor and the Collateral Agent in writing promptly upon becoming aware of any Imposition or other Lien (other than any Permitted Lien excepted above) that shall attach to the Equipment or any Item of Equipment, and of the full particulars thereof.

(c) Nothing contained in this Lease shall be construed as constituting the consent or request of the Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, modification, addition, repair or demolition of or to any Leased Asset or any part thereof. NOTICE IS HEREBY GIVEN THAT THE LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE LESSEE, OR TO ANYONE HOLDING ANY LEASED ASSET OR ANY PART THEREOF THROUGH OR UNDER THE LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR

ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF THE LESSOR IN AND TO ANY LEASED ASSET.

14.2 Equipment to Be and Remain Personal Property. The Lessee shall take all such actions as may be required to assure that all Equipment shall be and at all times remain personal property, notwithstanding the manner in which any Equipment may be attached or affixed to realty. The Lessee shall obtain and record such instruments and take such steps as may be necessary to prevent any Person from acquiring any rights in any Equipment by reason of such Equipment being claimed or deemed to be real property. Upon the reasonable request of the Lessor or the Collateral Agent, the Lessee shall obtain and deliver to the Lessor and the Collateral Agent valid and effective waivers, in recordable form, by the owners, landlords and mortgagees of the real property upon which any Equipment is located or certificates of the Lessee that it is the owner of such real property or that such real property is not leased and/or mortgaged. The Lessee shall cause any Equipment subject to motor vehicle titling and registration laws, or any similar titling laws, to be titled in the name of the Lessee, as owner, with the Lessor to be shown as sole lienholder, and shall cause all certificates of title to be promptly furnished to the Collateral Agent.

14.3 Identification Marks; Inspection. The Lessee will cause each Item to be kept numbered with the identification number as shall be set forth on the Lease Supplement therefor, and the Lessee will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Item, in letters not less than one inch in height, the words "Ownership Subject to an Agreement Filed with the Surface Transportation Board," with appropriate changes thereof and additions thereto as from time to time may be required by law or the American Association of Railroads Interchange Rules in order to protect Lessor's title to and interests in such Item and the rights of Lessor and of the Collateral Agent. Lessee will replace promptly any such words which may be removed, defaced, obliterated or destroyed. Lessee will not change the identification number of any Item unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and the Collateral Agent and filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Lessor and the Collateral Agent an opinion of counsel in form and substance satisfactory to the Collateral Agent to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect Lessor's and the Collateral Agent's interests in such Items and that no other filing, recording, deposit or giving of notice with or to any other Governmental Authority is necessary to protect the interests of Lessor and the Collateral Agent in such Item. The Items of Equipment may be lettered with the names or initials or other insignia customarily used by Lessee. Lessee shall not allow the name of any Person to be placed upon any Item of Equipment as a designation that might be interpreted as indicating a claim of ownership thereto or a security interest therein by any Person other than Lessor or the Collateral Agent. Upon the request of Lessor, Lessee shall make the Equipment available to Lessor during normal business hours at a rail site reasonably acceptable to Lessor, in the absence of the occurrence and continuance of a Default or Event of Default, not more than once a year, for inspection (including, without limitation, the use of photographic and video equipment) and shall also make Lessee's records pertaining to the Equipment available to the Lessor and the Collateral Agent for inspection; provided, however, in the event of a repudiation by Lessee of any of its material obligations under this Lease and during the Marketing Period, the Lessor and the Collateral Agent shall have the right to conduct such an inspection at any time.

ARTICLE XV

PERMITTED CONTESTS

15.1 Permitted Contests.

(a) The Lessee shall not be required to pay any Imposition on any Leased Asset, or to discharge or remove any Lien on any Leased Asset, or to comply or cause any Leased Asset to comply with any Requirements of Law applicable thereto or the occupancy, use or operation thereof, so long as no Event of Default exists under this Lease and, in the opinion of the Lessee's counsel, the Lessee shall have reasonable grounds to contest the existence, amount, applicability or validity thereof by appropriate proceedings, which proceedings in the reasonable judgment of the Collateral Agent, (i) shall not involve any material danger that any Leased Asset or any Rent would be subject to sale, forfeiture or loss, as a result of failure to comply therewith, (ii) shall not affect the payment of any Rent or result in any such amounts being payable to any Person other than the Lessor or the Collateral Agent, (iii) will not place the Lessor or any other Indemnitee in any danger of civil liability for which the Lessor or such Indemnitee is not adequately indemnified (the Lessee's obligation under Section 24.1 of this Lease shall be deemed to be adequate indemnification if no Default or Event of Default exists and if such civil liability is reasonably likely to be less than \$100,000 per Leased Asset and \$500,000 in the aggregate) or to any criminal liability, (iv) if involving Taxes, shall suspend the collection of such Taxes, and (v) shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Lessee or the Leased Asset is subject and shall not constitute a default thereunder (a "Permitted Contest"). The Lessee shall conduct all Permitted Contests in good faith and with due diligence and shall promptly after the final determination (including appeals) of any Permitted Contest, pay and discharge all amounts which shall be determined to be payable therein. The Lessor shall cooperate in good faith with the Lessee with respect to all Permitted Contests conducted by the Lessee pursuant to this Section 15.1.

(b) Promptly following the commencement of any Permitted Contest, the Lessee shall notify the Lessor and the Collateral Agent in writing thereof if the amount in contest exceeds \$100,000, and shall describe such proceeding in reasonable detail. In the event that a taxing authority or subdivision thereof proposes an additional assessment or levy of any Tax for which the Lessee is obligated to reimburse the Lessor under this Lease, or in the event that the Lessor is notified of the commencement of an audit or similar proceeding which could result in such an additional assessment, then the Lessor shall in a timely manner notify the Lessee in writing of such proposed levy or proceeding.

ARTICLE XVI

INSURANCE

16.1 Public Liability and Workers' Compensation Insurance. During the Lease Term for any Equipment, the Lessee shall procure and carry public liability insurance and property damage insurance with respect to such Equipment (i) in amounts which are not less than the public liability and property damage insurance applicable to similar assets owned, leased or held by the Lessee and its Affiliates and (ii) of the types usually carried by corporations engaged in the same or a similar business, similarly situated with the Lessee and its Affiliates, and owning or operating similar assets in the state in which such Equipment is located and which cover risk of the kind customarily insured against by such corporations. The insurance required by this clause may be subject to such deductibles and the Lessee may self-insure with respect to the required coverage to the extent approved by the Collateral Agent.

16.2 Hazard and Other Insurance. During the Lease Term for any Equipment, the Lessee will maintain in effect physical damage insurance with respect to such Equipment which is of the type usually

carried by corporations engaged in the same or similar business, similarly situated with the Lessee and its Affiliates, and owning or operating similar assets and which covers risk of the kind customarily insured against by such corporations, and in substantially the amount applicable to similar assets owned, leased or held by the Lessee and its Affiliates; provided that such insurance shall at all times be in an amount not less than the aggregate Lease Balance of all such Equipment. The insurance required by this clause may be subject to such deductibles and the Lessee may self-insure with respect to the required coverage to the extent approved by the Collateral Agent.

16.3 Insurance Coverage.

- (a) The insurance required under Sections 16.1 and 16.2 shall name the Lessor, the Collateral Agent and each other Lender Party as additional insureds with respect to liability coverage (excluding worker's compensation insurance), and shall name the Collateral Agent as loss payee with respect to property coverage. All such insurance shall be at the sole cost and expense of the Lessee and shall be maintained with respect to each Leased Asset from the Acquisition Date thereof through the Expiration Date. The policy or policies required by Sections 16.1 and 16.2 shall include a provision for no less than ten (10) days' advance written notice by the insurer to the Collateral Agent in the event of cancellation or material change of such insurance.
- (b) The Lessee agrees that the insurance policy or policies required by Sections 16.1 and 16.2 shall include an appropriate clause pursuant to which such policy shall provide that it will not be invalidated should the Lessee waive, prior to a loss, any or all rights of recovery against any party for losses covered by such policy, and that the insurance in favor of the Collateral Agent and the other additional insureds and their rights under and interests in said policies shall not be invalidated or reduced by any act or omission or negligence of the Lessee or any other Person having any interest in any Leased Asset. The Lessee and the Lessor each hereby waives any and all rights against the other for loss or damage to or loss of use of its property to the extent of payments made under its property insurance so long as such waiver shall not affect its rights to recover under such insurance.
- (c) All such insurance shall be written by reputable insurance companies that are financially sound and solvent and otherwise reasonably appropriate considering the amount and type of insurance being provided by such companies. Any insurance company selected by the Lessee shall be rated in Best's Insurance Guide or any successor thereto and shall have a general policyholder rating of "A" and a financial size rating of at least "VIII" at the time of issuance of a policy or be otherwise acceptable to the Collateral Agent. All insurance policies required by Section 16.2 shall include a standard form mortgagee endorsement in favor of the Lessor.
- (d) The Lessor shall not carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article XVI except that the Lessor may carry separate liability insurance so long as (i) the Lessee's insurance is designated as primary and in no event excess or contributory to any insurance the Lessor may have in force which would apply to a loss covered under the Lessee's policy and (ii) each such insurance policy will not cause the Lessee's insurance required under this Article XVI to be subject to a coinsurance exception of any kind. Each policy maintained by the Lessee shall specifically provide that the policy shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which the Lessor may have in force.
- (e) The Lessee shall pay as they become due all premiums for the insurance required by Section 16.1 and Section 16.2, and shall renew or replace each policy prior to the expiration date thereof. Upon the request of the Collateral Agent (but not more often than once per year if no Event of Default has occurred and is continuing), the Lessee shall deliver to the Lessor and the Collateral Agent

certificates of insurance evidencing that all insurance required by this Article XVI with respect to such Leased Asset is being maintained by the Lessee and is in effect. The Lessee shall also deliver to the Lessor and the Collateral Agent evidence of the renewal of each insurance policy required by this Article XVI at least thirty (30) days prior to the expiration of such policy.

(f) All insurance proceeds in respect of any property damage, loss or occurrence during the Lease Term for any Item of Equipment for which the proceeds related thereto are (i) less than or equal to the Lease Balance for such Item of Equipment, in the absence of the occurrence and continuance of a Default or Event of Default, shall be adjusted by and paid to the Lessee for application toward the reconstruction, repair or refurbishment of the applicable Item of Equipment and (ii) greater than the Lease Balance for such Item of Equipment, shall be adjusted jointly by the Lessee and the Collateral Agent (unless a Default or Event of Default has occurred and is continuing, in which case such proceeds shall be adjusted solely by the Collateral Agent) and held by the Collateral Agent for application in accordance with Article XVII.

ARTICLE XVII

CASUALTY AND CONDEMNATION

17.1 Casualty and Condemnation.

(a) During the Lease Term for any Item of Equipment, subject to the provisions of this Article XVII, if such Item of Equipment is subject to a Casualty or a Condemnation, then:

(i) (A) in the case of a Casualty which is not a Significant Casualty, any insurance proceeds payable with respect to such Casualty shall be paid directly to the Lessee (or if received by the Lessor, shall be paid over to the Lessee) for the reconstruction, refurbishment and repair of such Leased Asset, and (B) in the case of a Casualty which is a Significant Casualty, any insurance proceeds payable with respect to such Casualty shall be paid to the Lessor and applied toward the payment of the Lease Balance for such Item of Equipment; and

(ii) in the case of a Condemnation such award or compensation shall be paid to the Lessor to be applied by the Lessor to the restoration of the affected Item of Equipment if reasonably practicable or otherwise toward the payment of the Lease Balance for such Item of Equipment;

provided, however, that if a Default or Event of Default shall have occurred and be continuing, such award, compensation or insurance proceeds shall be paid directly to the Collateral Agent or, if received by the Lessee, shall be held in trust for the Lessor and shall be paid over by the Lessee to the Collateral Agent. All amounts held by the Lessor on account of any award, compensation or insurance proceeds when a Default or Event of Default exists shall at the option of the Collateral Agent either be (i) paid to the Lessee for the repair of damage caused by such Casualty or Condemnation or (ii) applied toward the payment of the Lease Balance for such Item of Equipment or (iii) used by the Lessor to pay for the repair of damage caused by such Casualty or Condemnation on behalf of the Lessee.

(b) During the Lease Term for any Item of Equipment, the Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any Casualty or Condemnation with respect to such Item of Equipment and shall pay all expenses thereof. At the Lessee's reasonable request, and at the Lessee's sole cost and expense, the Lessor shall participate in any such proceeding, action, negotiation, prosecution or

adjustment. The Lessor and the Lessee agree that this Lease shall control the rights of the Lessor and the Lessee in and to any such award, compensation or insurance payment.

(c) If the Lessor or the Lessee shall receive notice of a Casualty or of an actual, pending or threatened Condemnation of any Item of Equipment or any interest therein, the Lessor or the Lessee, as the case may be, shall give notice thereof to the other and to the Collateral Agent promptly after the receipt of such notice.

(d) If a Casualty which is not a Significant Casualty shall occur with respect to any Item of Equipment during the Lease Term applicable thereto, then the Lessee shall, at its sole cost and expense (and, without limitation, if any insurance payment is not sufficient to restore such Item of Equipment in accordance with this paragraph, the Lessee shall pay the shortfall), promptly and diligently repair any damage to such Item of Equipment caused by such Casualty as soon as practicable after the date of such Casualty and in conformity with the requirements of Sections 12.1 and 13.1, as modified to give effect to any subsequent Alterations and all applicable Requirements of Law, so as to restore such Item of Equipment to at least the same condition, operation, function and value as existed immediately prior to such Casualty with such Alterations as the Lessee may elect in accordance with Section 13.1. Upon completion of such restoration, the Lessee shall furnish the Lessor and the Collateral Agent a certificate and an Engineer's certificate confirming that such restoration has been completed pursuant to this Lease.

(e) If a Significant Casualty shall occur with respect to any Item of Equipment during the Lease Term applicable thereto, then the Lessee shall be obligated to purchase the Lessor's interest in such Item of Equipment on or prior to the date occurring fifteen (15) days after the date of such Significant Casualty by paying the Lessor an amount equal to the Lease Balance for such Item of Equipment on such date of payment. On the date of the payment by the Lessee of the Lease Balance for such affected Item of Equipment in accordance with this Section 17.1(e), this Lease shall terminate with respect to such Item of Equipment and the provisions of Section 23.1 shall be applicable.

(f) In no event shall a Casualty or Condemnation affect the Lessee's obligations to pay Rent pursuant to Article VI or to perform its obligations and pay any amounts due on the Expiration Date or pursuant to Articles XX and XXIII.

(g) Provided that no Default or Event of Default has occurred and is continuing, any Excess Proceeds received by the Lessor or the Collateral Agent in respect of a Casualty or Condemnation affecting any Item of Equipment shall be turned over to the Lessee upon the full payment of the Lease Balance for such Item of Equipment and all other amounts then due and payable hereunder with respect to such Item of Equipment.

ARTICLE XVIII

EVENTS OF DEFAULT; REMEDIES

18.1 Events of Default. The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "Event of Default":

(a) Payment. the Lessee shall fail to make payment of (i) any Purchase Option Price, Guaranteed Residual Value or Lease Balance when due or (ii) Base Rent, Supplemental Rent or any other

amount payable hereunder when due and such Base Rent, Supplemental Rent or other amount shall not be paid in full within three (3) days after the due date therefor; or

(b) Insurance; Certain Covenants. the Lessee shall fail to maintain insurance as required by Article XVI of this Lease or to perform any term, covenant or condition set forth in Section 30.2(b), (g) or (h); or

(c) Other Covenants. the Lessee shall fail to observe or perform any obligation, covenant or condition of the Lessee under this Lease or the other Operative Documents to which it is party other than those described in Section 18.1(a) or (b) hereof, and such failure shall have continued for thirty (30) days after delivery to the Lessee of written notice thereof from the Lessor or the Collateral Agent; provided, however, that the continuation of such failure for a period of thirty (30) days or more after such notice has been so given (but in no event for a period which is of a duration longer than six (6) months or the remaining Lease Term, whichever is shorter, shall not constitute an Event of Default if (i) such failure can be remedied but cannot be remedied within such thirty (30) days, (ii) Lessee is diligently pursuing a remedy of such failure and (iii) such failure does not impair in any material respect Lessee's ability to perform its obligations hereunder or Lessor's interest in the Equipment; or

(d) Representations and Warranties of Lessee. any representation or warranty made by the Lessee in any of the Operative Documents to which it is a party or in any certificate or other document furnished pursuant thereto shall prove to have been inaccurate in any material respect at the time made or shall be breached in any material respect; or

(e) Cross-Default. the Lessee or any Subsidiary of the Lessee shall default in the payment when due of any principal of or interest on any Indebtedness having an aggregate outstanding principal amount of at least \$25,000,000; or any event or condition shall occur which results in the acceleration of the maturity of any such Indebtedness of the Lessee or any such Subsidiary or enables (or, with the giving of notice or lapse of time or both, would enable) the holder of any such Indebtedness or any Person acting on such holder's behalf to accelerate the maturity thereof; or

(f) Voluntary Proceedings. the Lessee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing; or

(g) Involuntary Proceedings. an involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against the Lessee in any such involuntary case or other proceeding; or

(h) Judgments. one or more judgments, orders, decrees or arbitration awards requiring the Lessee to pay an aggregate amount of \$25,000,000 or more (exclusive of amounts covered by insurance issued by an insurer not an Affiliate of the Lessee) shall be rendered against the Lessee and the same shall not be satisfied, vacated or stayed for a period of thirty (30) consecutive days; or

(i) Repudiation; Invalidity. the Lessee shall directly or indirectly contest the validity of any Operative Document or any lien granted by any Operative Document, or shall repudiate, or purport to discontinue or terminate, any Operative Document to which it is a party or any such Operative Document shall cease to be a legal, valid and binding obligation of the Lessee or shall cease to be in full force and effect against the Lessee for any reason other than as a result of the expiration of such Operative Document in accordance with its terms (and in the event such Operative Document shall so cease to be a legal, valid and binding obligation of the Lessee or cease to be in full force and effect against the Lessee, the Lessee shall not have taken all such actions necessary or desirable (in the reasonable opinion of the Collateral Agent and its counsel) to put the Lessor, the Collateral Agent and each other Lender Party in the same position they would have enjoyed had such Operative Document not ceased to be a legal, valid and binding obligation of the Lessee or ceased to be in full force and effect); or

(j) ERISA. Any ERISA Event shall have occurred with respect to a Plan which could reasonably be expected to have a material adverse effect on the financial condition of Lessee, and, thirty (30) days after notice thereof shall have been given to Lessor by Lessee, such ERISA Event shall still exist; or

(k) Change of Control. A Change of Control shall occur.

18.2 Remedies.

(a) Upon the occurrence of any Event of Default and at any time thereafter, the Lessor may, so long as such Event of Default is continuing, with respect to each Leased Asset, do one or more of the following as the Lessor in its sole discretion shall determine, without limiting any other right or remedy the Lessor may have on account of such Event of Default (including the obligation of the Lessee to purchase the Leased Assets as set forth in Section 20.2):

(i) The Lessor may, by notice to the Lessee, terminate this Lease as of the date specified in such notice; provided, however, that no reletting, reentry or taking of possession of any Leased Asset or all of the Leased Assets (or any portion thereof) by the Lessor will be construed as an election on the Lessor's part to terminate this Lease unless a written notice of such intention is given to the Lessee;

(ii) The Lessor may (A) demand that the Lessee, and the Lessee shall upon the written demand of the Lessor, surrender any Leased Asset promptly to the Lessor in the manner and condition required by Section 12.1 as if the Leased Asset were being surrendered at the end of the Lease Term, and the Lessor shall not be liable for the reimbursement of the Lessee for any costs and expenses incurred by the Lessee in connection therewith and (B) without prejudice to any other remedy which the Lessor may have for possession of any Leased Asset, and to the extent and in the manner permitted by Applicable Law, enter upon such Leased Asset and take immediate possession of (to the exclusion of the Lessee) such Leased Asset or any part thereof and expel or remove the Lessee and any other Person who may be occupying or have possession of such Leased Asset, by summary proceedings or otherwise, all without liability to the Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(iii) The Lessor may (A) sell all or any part of one or more Leased Assets at public or private sale, free and clear of any rights of the Lessee, and without any duty to account to the Lessee with respect to such action or any proceeds (except as provided in Section 18.2(d)), in which event the Lessee's obligation to pay Base Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be, and (B) if

the Lessor shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that the Lessor's actual damages would be difficult to predict, but the aforementioned liquidated damages represent a reasonable approximation of such amount), an amount equal to (1) the excess, if any, of (x) the Lease Balance calculated as of the date of such sale (plus all Rent due and unpaid to and including such date) plus the Premium Amount, over (y) the net proceeds of such sale (that is, after deducting all costs and expenses incurred by the Lessor incident to such conveyance, including repossession costs, brokerage commissions, prorations, transfer taxes, reasonable fees and expenses for counsel, recording fees, and any repair costs); plus (2) interest at the Overdue Rate on the foregoing amount from such date until the date of payment;

(iv) The Lessor may, at its option, elect not to terminate this Lease and continue to collect all Base Rent, Supplemental Rent, and all other amounts due the Lessor (together with all costs of collection) and enforce the Lessee's obligations under this Lease as and when the same become due, or are to be performed, and at the option of the Lessor, upon any abandonment of any Leased Asset by the Lessee or re-entry or re-taking of same by the Lessor, the Lessor may, in its sole and absolute discretion, elect to re-let any Leased Asset or any part thereof for such term or terms (which may be for a term extending beyond the Lease Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Lessor in its reasonable discretion may deem advisable; and upon each such reletting all rentals actually received by the Lessor from such reletting shall be applied to the Lessee's obligations hereunder and the other Operative Documents in such order, proportion and priority as the Lessor may elect in the Lessor's sole and absolute discretion and, in addition to the Lessor's other damages, the Lessee shall be responsible for all costs and expenses incurred by the Lessor in connection with any reletting, including, without limitation, reasonable brokers' fees and all reasonable costs of any alterations or repairs made by the Lessor. If such rentals received from such reletting during any period are less than the Rent with respect to such Leased Asset to be paid during that period by the Lessee hereunder, the Lessee shall pay any deficiency, as calculated by the Lessor, to the Lessor on the next Payment Date;

(v) Unless all of the Leased Assets have been sold in their entirety, the Lessor may, whether or not the Lessor shall have exercised or shall thereafter at any time exercise any of its rights under paragraph (ii), (iii) or (iv) of this Section 18.2 with respect to the Leased Assets or portions thereof, demand, by written notice to the Lessee specifying a date not earlier than ten (10) days after the date of such notice, that the Lessee purchase, on such date, all unsold Leased Assets (or the remaining portion thereof) in accordance with the provisions of Article XX; provided, however, that no such written notice shall be required upon the occurrence of any Bankruptcy Event; and

(vi) The Lessor may exercise any other right or remedy that may be available to it under Applicable Law, or proceed by appropriate court action (legal or equitable) to enforce the terms hereof or to recover damages for the breach hereof. Separate suits may be brought to collect any such damages for any period(s), and such suits shall not in any manner prejudice the Lessor's right to collect any such damages for any subsequent period(s), or the Lessor may defer any such right to suit until after the expiration of the Lease Term, in which event such right to suit shall be deemed not to have accrued until the expiration of the Lease Term, notwithstanding any reletting, reentry or taking of possession, the Lessor may at any time thereafter elect to terminate this Lease for a continuing Event of Default.

(b) To the maximum extent permitted by Applicable Law, the Lessee hereby waives the benefit of any appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale of any Leased Asset or any interest therein.

(c) Neither the entering into of this Lease nor its enforcement shall prejudice or in any manner affect the Lessor's right to realize upon or enforce any other security now or hereafter held by the Lessor, it being agreed that the Lessor shall be entitled to enforce this Lease and any other security now or hereafter held by the Lessor in such order and manner as the Lessor may determine in its absolute discretion. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Operative Documents to the Lessor or to which it may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Lessor. In no event shall the Lessor, in the exercise of the remedies provided in this instrument (including in connection with the assignment of rents to Lessor or the appointment of a receiver and the entry of such receiver on to all or any part of the Leased Assets), be deemed a "mortgagee in possession," and the Lessor shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

(d) If, pursuant to the exercise by the Lessor of its remedies pursuant to this Section 18.2, the Lease Balance for all Leased Assets plus all other amounts due and owing from the Lessee under this Lease and the other Operative Documents shall have been paid in full, the Lessor shall remit to the Lessee any excess amounts received by the Lessor in respect of the Leased Assets.

18.3 Waiver of Certain Rights. If this Lease shall be terminated pursuant to Section 18.2, the Lessee waives, to the fullest extent permitted by law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or repossession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt or limiting the Lessor with respect to the election of remedies; and (d) any other rights which might otherwise limit or modify any of the Lessor's rights or remedies under this Article XVIII.

ARTICLE XIX

ASSIGNMENT

19.1 Assignment by Lessor. The Lessor may not assign, sell or transfer this Lease or any of its rights and obligations hereunder or under the other Operative Documents; provided, however, that the Lessor may assign, sell or transfer this Lease or any of such rights and obligations (i) in connection with the financing or refinancing its acquisition of the Leased Assets, (ii) as specifically provided in the Operative Documents or (iii) in connection with the exercise of any of its rights or remedies thereunder.

19.2 Assignment by Lessee.

(a) The Lessee may not assign this Lease or any of its rights or obligations hereunder or under the other Operative Documents; provided, however, that the Lessee may:

(i) assign the Purchase Option or the Remarketing Option so long as the Lessee remains fully liable for all of the obligations of the "Lessee" under Articles XX and XXIII or XXII and XXIII, respectively and provided further that the exercise of the Purchase

Option and the Remarketing Option remains subject to the satisfaction of the conditions applicable thereto; and

(ii) assign all of its rights and obligations under the Lease and the other Operative Documents to any Person; provided that (A) in the case of an assignment to any Person other than an Affiliate of the Lessee, the consent of the Collateral Agent shall be required and (B) in the case of any assignment, (I) no Default or Event of Default shall have occurred and be continuing on the date of such assignment or would result therefrom, (II) the assignee shall have assumed all of the obligations of the Lessee under this Lease and the other Operative Documents pursuant to an instrument in form and substance satisfactory to the Collateral Agent, (III) the Lessee and such assignee shall have taken all action necessary to ensure that the Lessor at all times has a perfected interest in the Leased Assets subject to no Liens other than Permitted Liens and Lessor Liens, (IV) the Collateral Agent shall have received an opinion in form and substance and from counsel satisfactory to the Collateral Agent as to the matters set forth in clauses (II) and (III) hereof and such other matters as the Collateral Agent may reasonably request and (V) the Lessee and/or such assignee shall enter into such other instruments and agreements and take such other actions as the Collateral Agent may reasonably request in connection with such assignment.

(b) Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing hereunder, Lessee and its Affiliates shall be entitled to the possession and use of the Items of Equipment upon lines of railroad owned or operated by it or upon lines of railroad over which Lessee or its Affiliates has or have trackage or other operating rights or over which railroad equipment of Lessee or its Affiliates is operated pursuant to contract and shall be entitled to permit the use of the Items of Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, provided, that LESSEE'S OBLIGATIONS UNDER THIS LEASE SHALL CONTINUE IN THEIR ENTIRETY IN FULL FORCE AND EFFECT AS THE OBLIGATIONS OF A PRINCIPAL AND NOT OF A SURETY. Lessee may receive and retain compensation for the use of any of the Items of Equipment from railroads or other entities so using such Items of Equipment.

ARTICLE XX

PURCHASE PROVISIONS

20.1 Purchase Option. Provided that no Event of Default has occurred and is continuing and the Lessee has not given notice of its intention to exercise the Remarketing Option, the Lessee shall have the option (exercisable by giving the Lessor irrevocable written notice (the "Purchase Notice") of the Lessee's election to exercise such option) to purchase all of the Leased Assets leased under any Lease Supplement (unless provisions with respect to joinder of purchase options for the Leased Assets under more than one Lease Supplement are set forth in a Lease Supplement, in which case such exercise must comply with such provisions) on any Scheduled Payment Date occurring after the fifth anniversary of the date of this Lease and specified in such Purchase Notice at a price equal to the sum of the Lease Balance for such Leased Assets plus the Premium Amount (the "Purchase Option Price"). The Lessee shall deliver the Purchase Notice to the Lessor not less than ninety (90) days prior to such purchase. If the Lessee exercises its option to purchase any Leased Assets pursuant to this Section 20.1 (the "Purchase Option"), the Lessor shall transfer to the Lessee or its designee all of the Lessor's right, title and interest in and to such Leased Assets as of the date specified in the Purchase Notice upon receipt of the Purchase Option Price in accordance with Section 23.1. The Lessee may designate, in a notice given to the Lessor not less than ten (10) Business Days prior to the closing of such purchase (time being of the essence), the transferee or transferees to whom the conveyance shall be made (if other than to the Lessee), in which case such conveyance shall (subject to the terms and conditions set forth herein) be made to such

designee; provided, however, that such designation of a transferee or transferees shall not cause the Lessee to be released, fully or partially, from any of its obligations under this Lease, including the obligation to pay the Lessor the Purchase Option Price on the date specified for such purchase.

20.2 Acceleration of Purchase Obligation.

(a) The Lessee shall be obligated to purchase for an amount equal to the sum of the Lease Balance plus the Premium Amount the Lessor's interest in all of the Leased Assets at any time during the Lease Term (notwithstanding any prior election to exercise its Purchase Option pursuant to Section 20.1) (i) automatically and without notice upon the occurrence of any Bankruptcy Event with respect to the Lessee and (ii) as provided for in Section 18.2(a)(v) immediately upon written demand of the Lessor upon the occurrence of any other Event of Default.

(b) The Lessee shall be obligated to purchase the Lessor's interest in any Leased Asset for an amount equal to the sum of the Lease Balance plus the Premium Amount immediately upon written demand of the Lessor at any time during the Lease Term when the Lessor ceases to have title to such Leased Asset as contemplated by Section 14.1.

20.3 Purchase Procedures. Any purchase under Section 20.1 or 20.2 shall be made in accordance with Section 23.1.

ARTICLE XXI

RENEWAL TERMS

21.1 Renewal.

(a) Subject to the conditions set forth herein, the Lessee shall have the option (the "Renewal Option") to extend the Expiration Date for up to two (2) additional one-year periods (each, a "Renewal Term"), with each such Renewal Term to commence on the first day following the then current Expiration Date. The Renewal Option with respect to each Renewal Term shall automatically be effective upon satisfaction of each of the following conditions:

(i) the Lessee shall have given the Lessor and each Lender Party written notice thereof not later than six (6) months prior to each of the fifth and, if applicable, sixth anniversaries of the date of this Lease,

(ii) no Event of Default shall have occurred and be continuing, and

(iii) each of the Bank Margin and the Lessor Margin shall have been reset at then existing market rates for lessees with the same or similar credit ratings as the Lessee, as determined by the Collateral Agent; provided that the Bank Margin and the Lessor Margin shall not be less than, or more than 400 basis points greater than, the margins set forth in the definition of Bank Margin and Lessor Margin, respectively.

(b) Each extension of this Lease for a Renewal Term shall cause the remaining Lease Term of each Leased Asset to be extended by one additional year; thus, if this Lease is extended on each of the anniversaries referred to above, the term of this Lease shall be for seven (7) years.

ARTICLE XXII

REMARKETING OPTION

22.1 Option to Remarket.

(a) Subject to the fulfillment of each of the conditions set forth in this Section 22.1(a), the Lessee shall have the option (the "Remarketing Option") to market and complete the sale of Lessor's interest in all of the Leased Assets leased under any Lease Supplement (unless provisions with respect to joinder of remarketing options for the Leased Assets under more than one Lease Supplement are set forth in a Lease Supplement, in which case the exercise of such option must comply with such provisions) on the Expiration Date for such Leased Asset. The Lessee's effective exercise and consummation of the Remarketing Option shall be subject to the due and timely fulfillment of each of the following provisions as of the dates set forth below:

(i) Not later than six (6) months prior to such Expiration Date, the Lessee shall give to the Lessor and the Collateral Agent written notice of the Lessee's exercise of the Remarketing Option, which exercise shall be irrevocable. On the date of the Lessee's notice to the Lessor and the Collateral Agent of the Lessee's exercise of the Remarketing Option, no Event of Default shall exist.

(ii) On such Expiration Date, no Event of Default or Default shall exist and none of such Leased Assets shall be subject to a Permitted Contest.

(iii) On such Expiration Date, Lessee shall, at its expense, surrender and deliver possession of each Item of Equipment to Lessor or Lessor's agent at such location along the rail route then used by Lessee in the ordinary usage of the Equipment as shall be designated by Lessor in writing, or in the absence of such designation, at the then location of each such Item. At the time of such return to Lessor, each Item of Equipment (and each part or component thereof) shall:

(A) be in as good condition, state of repair and appearance as when delivered to Lessee hereunder, ordinary wear and tear except and not in immediate need of any further repair or reconditioning,

(B) comply with all laws and rules referred to in Sections 11.1 and 12.1,

(C) conform to and comply with all applicable Department of Transportation, Federal Railroad Administration (or any successor agency) safety rules and regulations,

(D) be suitable for interchange under the rules of the Association of American Railroads and Federal Railroad Administration (or any successor agency) rules and regulations, to the extent the Equipment was originally designed and approved,

(E) have attached or affixed thereto any addition, modification or improvement considered an accession thereto as provided in Section 13.1 and have had removed therefrom in a workmanlike manner if so requested by the Collateral Agent at Lessee's expense (A) any addition, modification or improvement which, as provided in

Section 13.1, is owned by Lessee, and (B) any insignia or marking permitted pursuant to Section 14.3 hereof,

(F) be suitable for loading coal,

(G) be free from all material accumulations or deposits from commodities transported in or on it while in the service of Lessee and be free of corrosion, ordinary wear and tear excepted,

(H) not have any missing or damaged parts or any structural or mechanical damage on any surface or device, ordinary wear and tear excepted, and

(I) be free and clear of all liens, other than any Lessor Lien.

Lessee shall pay for any repairs necessary to restore any Item of Equipment to the condition required by the preceding sentence.

(iv) For the purpose of delivering possession of the Items of Equipment as above required, Lessee shall at its own cost, expense and risk:

(A) forthwith and in the usual manner (including, but not by way of limitation, to the extent legally required by Applicable Law to protect Lessor's or any Lender Party's interest in the Items of Equipment) give prompt electronic and written notice to all railroads to which any Items of Equipment have been interchanged or which may have possession thereof to return the Items of Equipment and place such Items of Equipment upon such storage tracks along the rail routes then used by Lessee in the ordinary usage of the Equipment as Lessor reasonably may designate;

(B) cause such Items of Equipment to be stored on such tracks at the risk of the Lessee without charge to Lessor or any Lender Party for insurance, rent or storage until all such Items of Equipment have been sold, leased or otherwise disposed of by Lessor but not to exceed ninety (90) days; and

(C) deliver to Lessor, if requested, all manuals and inspection, modification, overhaul and maintenance records applicable to such Items of Equipment (which records may exclude the costs of repairs, maintenance, modifications and overhauls) and permit Lessor or its representatives access to such Items of Equipment during normal business hours during such storage period for the purposes of inspecting said Items and verifying that the return conditions set forth in this Section 22.1 have been complied with. During the storage period, the Lessee will maintain and keep the Items of Equipment in the manner set forth in Section 12.1 hereof and permit Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or other user of any Items of Equipment, to inspect the same during normal business hours at such inspector's own risk, cost and expense.

(v) During the Marketing Period, the Lessee shall use best efforts to sell the Lessor's interest in such Leased Assets and will attempt to obtain the highest purchase price therefor and for not less than the Fair Market Sales Value thereof. The Lessee will be responsible for hiring brokers and making such Leased Assets available for inspection by prospective purchasers. The Lessee shall promptly upon request permit inspection of such Leased Assets and any maintenance records relating to such Leased Assets by any potential purchasers, and shall

otherwise do all things necessary to sell and deliver possession of such Leased Assets to any purchaser. All such marketing of the Leased Assets shall be at the Lessee's sole expense. The Lessee's agency under this clause shall, for the first three (3) months of the Marketing Period, be on an exclusive basis. In the event the Lessee is unable to procure during such period a bona fide bid from a non-Affiliated Person with demonstrable financial capacity to consummate such bid for any Leased Asset, from and after such third month, the agency hereunder shall be on a non-exclusive basis.

(vi) The Lessee shall submit all offers to purchase such Leased Assets to the Collateral Agent and the Collateral Agent will have the right to review the same and the right to submit one or more of its own offers. All offers shall be on an all-cash basis unless the Collateral Agent shall otherwise agree in its sole discretion. No purchaser shall be the Lessee or an Affiliate of the Lessee. Each offer must specify such Expiration Date as the closing date unless the Collateral Agent shall otherwise agree in its sole discretion.

(vii) In connection with any such sale of Lessor's interest in any Leased Assets, the Lessee will provide to the purchaser all customary "seller's" indemnities, representations and warranties regarding absence of Liens (except Lessor Liens) and the condition of such Leased Assets to the extent the same are required by the purchaser. The Lessee shall have obtained, at its cost and expense, all required governmental and regulatory consents and approvals and shall have made all filings as required by all Requirements of Law in order to carry out and complete the transfer of such Leased Assets. As to the Lessor, any such sale of Lessor's interest in any Leased Assets shall be made on an "as is, with all faults" basis without representation or warranty by the Lessor other than the absence of Lessor Liens. Any agreement as to such sale shall be made subject to the Lessor's rights hereunder.

(viii) The Lessee shall pay directly, and not from the sale proceeds, all prorations, credits, costs and expenses of the sale of Lessor's interest in such Leased Assets, whether incurred by the Lessor, the Collateral Agent or the Lessee, including the cost of all environmental reports, appraisals, transfer taxes, the Lessor's and the Collateral Agent's reasonable attorneys' fees, the Lessee's attorneys' fees, commissions, escrow fees, recording fees, and all applicable documentary and other transfer taxes.

(ix) The Lessee shall pay to the Lessor on or prior to such Expiration Date (or to such other Person as the Lessor shall notify the Lessee in writing) an amount equal to the Guaranteed Residual Value for such Leased Assets, plus all Base Rent and all other amounts hereunder which have accrued or will accrue with respect thereto prior to or as of such Expiration Date plus the amount, if any, by which the Fair Market Sales Value of such Leased Assets have been reduced by excess wear and tear of any Leased Asset. If the Guaranteed Residual Value plus the portion of the Gross Proceeds to be retained by the Lessor pursuant to Section 22.1(b)(i) is less than the Lease Balance of such Leased Assets, then the Lessor may cause an appraisal to be made, at the expense of the Lessee, to determine the amount of such reduction due to excess wear and tear.

(b) (i) If the Lessee complies with all of the conditions and all of its obligations under clause (a) above and arranges for the sale of such Leased Assets, then the purchase of Lessor's interest in such Leased Assets shall be consummated on such Expiration Date and the Gross Proceeds of the sale of such Leased Assets shall be paid directly to the Lessor. If the Gross Proceeds received by the Lessor exceed the aggregate Lease Balance for such Leased Assets as of such date, then an amount equal to such excess plus the Guaranteed Residual Value (as paid to the Lessor by the Lessee pursuant to clause (a) above) shall be paid to the Lessee on the Expiration Date. If the Gross Proceeds received by the

Lessor are less than the aggregate Lease Balance for such Leased Assets as of the Expiration Date, then the Gross Proceeds shall be paid and applied as follows on the Expiration Date: first, to the Lessor in an amount equal to the difference between the Lease Balance and the Guaranteed Residual Value for such Leased Assets; and second, to the Lessee in an amount equal to the balance, if any, of such Gross Proceeds.

(ii) If the Lessee complies with all of the conditions and all of its obligations under clause (a) above but does not arrange for the sale of such Leased Assets, then the Lessee shall surrender the Leased Assets to the Lessor on such Expiration Date as required by Sections 12.2 and 23.2.

(iii) If the Lessee does not comply with any of the conditions or any of its obligations under clause (a) above with respect to such Leased Assets, then the Lessor may declare by written notice to the Lessee the Remarketing Option with respect to such Leased Assets to be null and void, in which event all of the Lessee's rights under this Section 22.1 shall immediately terminate and the Lessee shall be obligated to purchase Lessor's interest in such Leased Assets as if it had exercised its Purchase Option under Section 20.1 on such Expiration Date.

(c) Except as expressly set forth herein, the Lessee shall have no right, power or authority to bind the Lessor in connection with any proposed sale of Lessor's interest in any Leased Asset. The Lessor shall have the right, but shall be under no duty, to solicit offers, to inquire into the efforts of the Lessee to obtain offers or otherwise to take action in connection with any such sale of Lessor's interest in the Leased Assets, other than as expressly provided in this Article XXII. Notwithstanding anything to the contrary contained herein, the Lessor shall not be obligated to sell any Leased Asset or consummate any sale arranged by the Lessee if the portion of the Gross Proceeds thereof to be retained by the Lessor pursuant to Section 22.1(b)(i) plus the Guaranteed Residual Value of such Leased Asset would be less than the Lease Balance of such Leased Asset.

(d) In the event that the sale of all of such Leased Assets is not consummated on such Expiration Date, but such sale is consummated any time thereafter, the Lessor shall apply the Gross Proceeds thereof promptly after receipt: first, to the Lessor in an amount equal to the Imputed Carrying Cost of such Leased Asset accruing from and after such Expiration Date; and second, as provided in Section 22.1(b)(i).

22.2 Certain Obligations Continue. During the Marketing Period for any Leased Assets, the obligation of the Lessee to pay Rent shall continue undiminished until payment in full to the Lessor of the Guaranteed Residual Value and all other amounts due to the Lessor with respect to such Leased Assets under the Operative Documents to which the Lessee is a party.

ARTICLE XXIII

PROCEDURES RELATING TO PURCHASE OR REMARKETING

23.1 Conveyance upon Purchase. In connection with the Lessee's (or its designee's) purchase of any Leased Assets pursuant to Section 20.1 or 20.2 or in connection with a purchase of the Lessor's interest in any Leased Asset under Section 17.1(e):

(i) the Lessee shall pay or cause to be paid the amounts set forth in Section 20.1, Section 20.2 or Section 17.1(e), as applicable, together with all accrued Rent relating to such Leased Assets and any other amount then due and payable by the Lessee to the

Lessor under this Lease or the other Operative Documents (including any Transaction Expenses relating to such purchase);

(ii) the Lessor shall execute and deliver to the Lessee (or to the Lessee's designee) at the Lessee's cost and expense a bill of sale with respect to any Equipment being sold, and an assignment of the Lessor's entire interest in such Equipment in each case in recordable form and otherwise in conformity with local custom and free and clear of any Lessor Liens attributable to the Lessor; and

(iii) the Leased Assets being sold shall be conveyed to the Lessee (or to the Lessee's designee) "AS IS" and in their then present physical condition.

23.2 Conveyance upon Remarketing. If the Lessee properly exercises the Remarketing Option for any Leased Assets, then the Lessee shall, on the Expiration Date applicable thereto, and at its own cost, transfer possession of such Leased Assets to independent purchaser(s) thereof or the Lessor, as the case may be, in each case by surrendering the same into the possession of such purchaser(s) or the Lessor, as the case may be, in the condition required pursuant to Sections 22.1(a)(iii) and (iv). The Lessee shall, during the Marketing Period and up to one year after such Expiration Date, cooperate reasonably with the Lessor and the independent purchaser(s) of Lessor's interest in such Leased Assets in order to facilitate the purchase by such purchaser(s) of Lessor's interest in such Leased Assets, which cooperation shall include the following, all of which the Lessee shall do on or prior to such Expiration Date or as soon thereafter as is reasonably practicable: providing copies of all books and records regarding the maintenance and ownership of such Leased Assets and all data and technical and all other information relating thereto (to the extent not previously supplied), granting or assigning on or after such Expiration Date all licenses (to the extent such licenses are assignable under Applicable Law) necessary for the operation and maintenance of such Leased Assets and cooperating reasonably in seeking and obtaining any necessary Governmental Action. The obligations of the Lessee under this paragraph shall survive the expiration or termination of this Lease.

ARTICLE XXIV

INDEMNIFICATION

24.1 General Indemnification. The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated, to indemnify, protect, defend, save and hold harmless each Indemnatee, on an After Tax Basis, from and against any and all Claims that may be imposed on, incurred by or asserted against such Indemnatee (whether because of action or omission by such Indemnatee or otherwise), whether or not such Indemnatee shall also be indemnified as to any such Claim by any other Person and whether or not such Claim arises or accrues prior to the Closing Date or after the Expiration Date applicable to any Leased Asset, in any way relating to or arising out of:

- (a) any of the Operative Documents or any of the transactions contemplated thereby;
- (b) the Leased Assets or any part thereof or interest therein;
- (c) the purchase, design, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, ownership, management, possession, operation, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, transfer of title, redelivery, use, financing, refinancing, disposition, operation, condition, sale (including, without limitation, any sale pursuant to any provision hereof), return or other disposition of all or any part or any interest in any Leased Asset or the imposition of any Lien (or incurring of any liability to refund or

pay over any amount as a result of any Lien) thereon, including: (1) Claims or penalties arising from any violation of Applicable Law or in tort (strict liability or otherwise), (2) latent or other defects, whether or not discoverable, (3) any Claim based upon a violation or alleged violation of the terms of any restriction, easement, condition or covenant or other matter affecting title to any Leased Asset, (4) the making of any Alterations in violation of any standards imposed by any insurance policies required to be maintained by the Lessee pursuant to this Lease which are in effect at any time with respect to any Leased Asset or any part thereof, (5) any Claim for patent, trademark or copyright infringement and (6) Claims which would otherwise be covered by insurance policies of the Lessee, as required by Article XVI;

(d) the breach by the Lessee of any covenant, representation or warranty made by it or deemed made by it in any Operative Document or in any certificate delivered pursuant to any Operative Document;

(e) the retaining or employment of any broker, finder or financial advisor by the Lessee or any of its Affiliates to act on its behalf in connection with the transactions contemplated hereby; or

(f) the existence of any Lien on or with respect to any Leased Asset, any Base Rent or Supplemental Rent, or any interest therein, including any Liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of any Leased Asset or by reason of labor or materials furnished or claimed to have been furnished to the Lessee, or any of its contractors or agents or by reason of the financing of any personalty or equipment purchased or leased by the Lessee or Alterations made by the Lessee, except Lessor Liens and Liens in favor of the Lessor;

provided, however, the Lessee shall not be required to indemnify any Indemnitee under this Section 24.1 for any of the following: (1) any Claim to the extent resulting from the gross negligence or willful misconduct of such Indemnitee or the breach of any representation, warranty or covenant of such Indemnitee set forth in any Operative Document, (2) any Claim resulting from Lessor Liens which the Lessor is responsible for discharging under the Operative Documents, (3) any Claim arising from a breach or alleged breach by the Lessor of any Loan Agreement which does not arise from a breach by the Lessee of any of its obligations under the Operative Documents, (4) any Claim arising from the Lessor's or any other Indemnitee's violation of any state or federal law or regulation relating to banking or (5) any Claim to the extent attributable to acts or events occurring after the expiration of the Lease Term and the remarketing of any Leased Asset so long as the Lessor is not exercising remedies against the Lessee in respect of the Operative Documents. It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under this Lease or any other Operative Document. Without limiting the express rights of any Indemnitee hereunder, this Section 24.1 shall be construed as an indemnity only and not a guaranty of residual value of any Leased Asset.

24.2 Environmental Indemnity. Without limitation of the other provisions of this Article XXIV, the Lessee hereby agrees to indemnify, protect, defend, save and hold harmless each Indemnitee, on an After Tax Basis, from and against any and all Claims, including all costs incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work by any Governmental Authority, that may be imposed on, incurred by or asserted against such Indemnitee (whether because of action or omission by such Indemnitee or otherwise), whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person and whether or not such Claim arises or accrues prior to the Closing Date or after the Expiration Date applicable to any Leased Asset, in any way relating to or arising out of:

(a) the presence on or under any property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under, from or onto any property for which any Indemnitee or Lessee may be legally liable,

(b) any activity for which any Indemnitee or Lessee may be legally liable, carried on or undertaken on or off any property, and whether by the Lessee or any predecessor in title or any employees, agents, contractors or subcontractors of the Lessee or any predecessor in title, or any other Persons (including such Indemnitee), in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials that at any time are located or present on or under or that at any time migrate, flow, percolate, diffuse or in any way move onto or under any property,

(c) loss of or damage to any property or the environment (including, clean-up costs, response costs, remediation and removal costs, cost of corrective action, costs of financial assurance, fines and penalties and natural resource damages), or death or injury to any Person, and all expenses associated with the protection of wildlife, aquatic species, vegetation, flora and fauna, and any mitigative action required by or under Environmental Laws for which any Indemnitee or Lessee may be legally liable with respect to any property,

(d) any claim concerning any Indemnitee's or Lessee's lack of compliance with Environmental Laws applicable to any property, or any act or omission by any Indemnitee, the Lessee or any of their agents, employees or contractors causing an environmental condition with respect to any property that requires remediation or would allow any Governmental Authority to record a Lien on the land records, or

(e) any residual contamination on or under any land, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances for which any Indemnitee or Lessee may be legally liable;

provided, however, the Lessee shall not be required to indemnify any Indemnitee under this Section 24.2 for (1) any Claim to the extent resulting from the gross negligence or willful misconduct of such Indemnitee or (2) any Claim to the extent attributable to acts or events occurring after the expiration of the Lease Term and the remarketing of any Leased Asset so long as the Lessor is not exercising remedies against the Lessee in respect of the Operative Documents. It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under this Lease or any other Operative Document.

24.3 Tax Indemnity.

(a) The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated, to indemnify, protect, defend, save and hold harmless each Indemnitee, on an After Tax Basis, from and against any and all Impositions that may be imposed on, incurred by or asserted against such Indemnitee (whether because of action or omission by such Indemnitee or otherwise), whether or not such Indemnitee shall also be indemnified as to any such Impositions by any other Person and whether or not such Impositions arise or accrue prior to the Closing Date or after the Expiration Date applicable to any Leased Asset.

(b) Any Imposition indemnifiable under this Section 24.3 shall be paid directly when due to the applicable taxing authority if direct payment is practicable and permitted. If direct payment to

the applicable taxing authority is not permitted or is otherwise not made, any amount payable to an Indemnitee pursuant to this Section 24.3 shall be paid within thirty (30) days after receipt of a written demand therefor from such Indemnitee accompanied by a written statement describing in reasonable detail the amount so payable, but not before two (2) Business Days prior to the date that the relevant Taxes are due. Any payments made pursuant to this Section 24.3 directly to the Indemnitee entitled thereto shall be made in immediately available funds at such bank or to such account as specified by the payee in written directions to the payor, or, if no such direction shall have been given, by check of the payor payable to the order of the payee by certified mail, postage prepaid at its address. Upon the request of any Indemnitee with respect to an Imposition that the Lessee is required to pay, the Lessee shall furnish such Indemnitee the original or a certified copy of a receipt for the Lessee's payment of such Imposition or such other evidence of payment as is reasonably acceptable to such Indemnitee.

(c) Except in the case of a payment to the Conduit, any BNS Bank, any Liquidity Provider or any DVB Bank, at the Lessee's request, the amount of any indemnity payment by the Lessee pursuant to this Section 24.3 shall be verified and certified by an independent public accounting firm mutually acceptable to the Lessee and the Indemnitee. The Indemnitee shall provide such independent public accounting firm, on a confidential basis, the requisite financial information. The costs of such verification shall be borne by the Lessee unless such verification shall result in an adjustment in the Lessee's favor of \$10,000 or more, in which case such fee shall be paid by the Indemnitee. In no event shall the Lessee have the right to review the Indemnitee's tax returns or receive any other confidential information from the Indemnitee in connection with such verification. Any information provided to such independent public accounting firm by any Person shall be and remain the exclusive property of such Person and shall be deemed by the parties to be (and the independent public accounting firm will confirm in writing that they will treat such information as) the private, proprietary and confidential property of such Person, and no Person other than such Person and the independent public accounting firm shall be entitled thereto and all such materials shall be returned to such Person. Such independent public accounting firm shall be requested to make its determination within thirty (30) days of the Lessee's request for verification and the computations of the independent public accounting firm shall be final, binding and conclusive upon the Lessee and the Indemnitee. The parties agree that the sole responsibility of the independent public accounting firm shall be to verify the amount of a payment pursuant to this Lease and that matters of interpretation of this Lease are not within the scope of the independent public accounting firm's responsibilities.

(d) The Lessor represents and warrants that it will not, prior to the termination of the Lease Term for any Leased Assets, claim ownership of (or any tax benefits, including depreciation, with respect to) such Leased Assets for any income tax purposes, it being understood that the Lessee is and will remain the owner of such Leased Assets for such income tax purposes until the termination of such Lease Term.

(e) It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under this Lease or any other Operative Document.

24.4 Proceedings in Respect of Claims.

(a) If any Claim shall be made against any Indemnitee or if any action, suit or proceeding shall be brought against any Indemnitee in respect of any Claim for which such Indemnitee is entitled to be indemnified hereunder, such Indemnitee shall promptly notify the Lessee in writing (provided that failure to so notify the Lessee shall not alter such Indemnitee's rights under this Section 26 except to the extent such failure precludes or materially adversely affects the Lessee's ability to conduct a contest of any Claim), and the Lessee shall be entitled, at its expense, to participate in, and, to the extent

that the Lessee desires to, assume and control the defense thereof; provided, however, that the Lessee shall have acknowledged in writing its obligation to fully indemnify such Indemnitee in respect of such action, suit or proceeding, and the Lessee shall keep such Indemnitee fully apprised of the status of such action, suit or proceeding and shall provide such Indemnitee with all information with respect to such action, suit or proceeding as such Indemnitee shall reasonably request, and provided further that the Lessee shall not be entitled to assume and control the defense of any such action, suit or proceeding if and to the extent that (A) in the reasonable opinion of such Indemnitee, (x) such action, suit or proceeding involves any risk of imposition of criminal liability or any risk of imposition of material civil liability on such Indemnitee beyond that for which the Indemnitee is jointly and severally liable with the Lessor or will involve a material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on, any Leased Asset or any part thereof unless, in the case of civil liability, the Lessee shall have posted a bond or other security satisfactory to the relevant Indemnitees in respect to such risk or (y) the control of such action, suit or proceeding would involve a material conflict of interest on the part of the Lessee, (B) such proceeding involves Claims not fully indemnified by the Lessee which the Lessee and the Indemnitee have been unable to sever from the indemnified claim(s), or (C) an Event of Default has occurred and is continuing. The Indemnitee may participate in a reasonable manner at its own expense and with its own counsel in any proceeding conducted by the Lessee in accordance with the foregoing. The Lessee shall not enter into any settlement or other compromise with respect to any Claim which is entitled to be indemnified under Section 24.1, 24.2 or 24.3 without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld in the case of a money settlement not involving an admission of liability of such Indemnitee; provided, however, that in the event that such Indemnitee withholds consent to any settlement or other compromise, the Lessee shall not be required to indemnify such Indemnitee under Section 24.1, 24.2 or 24.3 to the extent that the applicable Claim (x) is for legal fees and expenses incurred after the date of the proposed settlement or (y) results in a judgment in excess of such offered money settlement.

(b) Each Indemnitee shall at the expense of the Lessee supply the Lessee with such information and documents reasonably requested by the Lessee and in the possession of such Indemnitee as are necessary or advisable for the Lessee to participate in any action, suit or proceeding to the extent permitted by this Section 24.4. Unless an Event of Default shall have occurred and be continuing under Section 18.1(a), (f) or (g), no Indemnitee shall enter into any settlement or other compromise with respect to any Claim for which it is entitled to be indemnified under Section 24.1, 24.2 or 24.3 without the prior written consent of the Lessee, which consent shall not be unreasonably withheld, unless such Indemnitee waives its right to be indemnified under Section 24.1, 24.2 or 24.3 with respect to such Claim.

(c) Any amount required to be paid to an Indemnitee pursuant to Section 24.1 or 24.2 shall be paid to such Indemnitee promptly upon receipt of a written demand therefor from such Indemnitee, accompanied by a written statement describing in reasonable detail the basis for such indemnity and the computation of the amount so payable and, if requested by the Lessee, such determination shall be verified by a nationally recognized independent accounting firm mutually acceptable to the Lessee and the Indemnitee at the expense of the Lessee; provided, however, that if the Lessee has assumed the defense of the related Claim or is paying the costs of the Indemnitee's defense of the related Claim on an ongoing basis, the Lessee shall not be required to pay such amount to the applicable Indemnitee until such time as a judgment is entered with respect to such Claim, the enforcement of which is not stayed or which judgment is not bonded over, or the Claim is otherwise settled or lost. Upon reimbursement of payment in full of any Claim by the Lessee pursuant to Section 24.1, 24.2 or 24.3 to or on behalf of an Indemnitee, the Lessee, without any further action, shall be subrogated to any and all claims that such Indemnitee may have relating thereto (including claims in respect of insurance policies maintained by such Indemnitee at its own expense), and such Indemnitee shall execute such instruments of assignment and conveyance, evidence of claims and payment and such other documents, instruments and agreements as may be necessary to preserve any such claims and

otherwise cooperate with the Lessee and give such further assurances as are necessary or advisable to enable the Lessee vigorously to pursue such claims.

ARTICLE XXV

ESTOPPEL CERTIFICATES

25.1 Estoppel Certificates. At any time and from time to time upon not less than twenty (20) days' prior request by the Lessor or the Lessee (the "Requesting Party"), the other party (whichever party shall have received such request, the "Certifying Party") shall furnish to the Requesting Party (but in the case of the Lessor, as Certifying Party, not more than once per year unless required to satisfy the requirements of any sublessees and only to the extent that the required information has been provided to the Lessor by the Lessee) a certificate signed by a representative of the Certifying Party certifying that this Lease is in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications); the dates to which the Base Rent and Supplemental Rent have been paid; to the best knowledge of the signer of such certificate, whether or not the Requesting Party is in default under any of its obligations hereunder (and, if so, the nature of such alleged default); and such other matters under this Lease as the Requesting Party may reasonably request. Any such certificate furnished pursuant to this Article XXV may be relied upon by the Requesting Party, and any existing or prospective mortgagee, purchaser or lender, and any accountant or auditor, of, from or to the Requesting Party (or any Affiliate thereof).

ARTICLE XXVI

ACCEPTANCE OF SURRENDER

26.1 Acceptance of Surrender. No surrender to the Lessor of this Lease or of all or any portion of any Leased Asset or of any part of any thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by the Lessor, and no act by the Lessor or any representative or agent of the Lessor, other than a written acceptance, shall constitute an acceptance of any such surrender.

ARTICLE XXVII

NO MERGER OF TITLE

27.1 No Merger of Title. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (i) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate or (ii) a beneficial interest in the Lessor.

ARTICLE XXVIII

INTENT OF THE PARTIES

28.1 Ownership of the Leased Assets; Grant of Security Interest.

(a) It is the intent of the parties hereto that for financial accounting and reporting purposes this Lease constitutes an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended, and for purposes of commercial, real estate, bankruptcy and federal, state

and local income tax law, the transaction contemplated hereby is a financing arrangement and preserves ownership of the Leased Assets in the Lessee.

(b) It is the intent of the parties hereto that for all purposes other than financial accounting and reporting, the obligations of the Lessee under this Lease to pay Base Rent and Lease Balance in connection with any purchase of any Leased Asset pursuant to this Lease shall be treated as payments of interest on and principal of, respectively, loans from the Lessor to the Lessee. The Lessee hereby grants to the Lessor a security interest in the Leased Assets to secure the Lessee's payment and performance of all obligations of the Lessee under this Lease and the other Operative Documents. The Lessor and the Lessee agree that for all federal, state and local tax purposes the Lessor and the Lessee shall treat, and take no action that is in any way inconsistent with the treatment of, the transaction contemplated hereby as a financing arrangement which preserves tax ownership of the Leased Assets in the Lessee in accordance with the intent of the parties as set forth in this Section 28.1.

ARTICLE XXIX

PAYMENT OF EXPENSES; YIELD PROTECTION

29.1 Transaction Expenses.

(a) The Lessee shall pay, or cause to be paid, from time to time all Transaction Expenses in respect of the transactions taking place on the Closing Date and on each Funding Date on such respective date; provided, however, that, if the Lessee has not received written invoices therefor two (2) days prior to such date, such Transaction Expenses shall be paid on the earlier of (i) the next Funding Date and (ii) the date thirty-five (35) days after the Lessee has received written invoices therefor.

(b) The Lessee shall promptly pay or cause to be paid (i) all reasonable Transaction Expenses from time to time incurred by the Lessor and the Collateral Agent in entering into any future amendments or supplements with respect to any of the Operative Documents, or giving or withholding of waivers of consents hereto or thereto, (ii) all reasonable Transaction Expenses incurred by the Lessor and the Collateral Agent in connection with any purchase, sale or exchange of any Leased Asset by the Lessee or other Person pursuant to this Lease and (iii) all Transaction Expenses incurred by the Lessor, the Collateral Agent and each other Lender Party in connection with any enforcement of any of their rights or remedies against the Lessee in respect of the Operative Documents.

(c) Notwithstanding anything to the contrary contained herein, if the Lessor has paid any Transaction Costs which the Lessee is responsible for paying hereunder or under the other Operative Documents, then, in lieu of requiring the Lessee to reimburse the Lessor therefor, the Lessor may, on the Acquisition Date for any Leased Asset, add a pro rata portion of such unreimbursed Transaction Costs (plus the Lessor's cost of financing the same from the date paid by the Lessor to such Acquisition Date) to the Lease Balance for such Leased Asset, and the Lessor shall be deemed to have made a Funding in an amount equal to such pro rata portion.

29.2 Brokers' Fees and Stamp Taxes. The Lessee shall pay or cause to be paid any brokers' fees and any and all stamp, transfer and other similar taxes, fees and excises, if any, including any interest and penalties, which are payable in connection with the transactions contemplated by this Lease and the other Operative Documents. The Lessor and the Lessee each represent to the other that it has not employed any brokers in connection with the transactions contemplated by the Operative Documents.

29.3 Funding Losses. If (i) any payment of Base Rent or any portion of a Lease Balance is made on any day other than a Scheduled Payment Date therefor or (ii) any Funding is not made on the

date specified therefor in the related Funding Request (other than as a result of a breach by the Lessor of its obligation under Section 3.1 to make such Funding), then the Lessee shall pay to the Lessor on demand, as Supplemental Rent, an amount equal to any loss or expense incurred by the Lessor as a result thereof, including (without limitation) any loss incurred in obtaining, liquidating or employing deposits from third parties, provided that the Lessor shall have delivered to the Lessee a certificate as to the amount of such loss or expense, which certificate shall be conclusive in the absence of manifest error.

29.4 Increased Cost; Capital Adequacy.

(a) In the event that the adoption after the date hereof of any applicable law, rule or regulation, or any change after the date hereof in any applicable law, rule or regulation or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lessor with any request or directive issued after the date hereof (whether or not having the force of law) of any such authority, central bank or comparable agency:

(i) shall impose, modify or hold applicable any reserve, special deposit, insurance assessment, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or any other acquisition of funds by, the Lessor which are not otherwise included in the calculation of Base Rent hereunder; or

(ii) shall impose on the Lessor any other condition;

and the result of any of the foregoing is to increase the cost to the Lessor of making or maintaining any Funding, or to reduce any amount receivable hereunder in respect thereof, then from time to time, within fifteen (15) days after demand by the Lessor, the Lessee shall pay to the Lessor, as Supplemental Rent, any additional amounts necessary to compensate the Lessor for such increased cost or reduced amount receivable.

(b) If the Lessor shall have determined that the adoption after the date hereof of any applicable law, rule or regulation regarding capital adequacy, or any change after the date hereof in any applicable law, rule or regulation or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance with any request or directive issued after the date hereof regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of the Lessor (or any entity directly or indirectly controlling the Lessor) as a consequence of its obligations under the Operative Documents to a level below that which it could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy), then from time to time, within fifteen (15) days after demand by the Lessor, the Lessee shall pay to the Lessor, as Supplemental Rent, such additional amount or amounts as will compensate the Lessor (or its controlling entities) for such reduction.

(c) The Lessor will notify the Lessee of any event occurring after the date of this Lease which will entitle the Lessor to compensation pursuant to Section 29.4(a) or (b) (an "Additional Cost Event") as promptly as practicable after it obtains knowledge thereof and determines to request such compensation, and (if so requested by the Lessee) will designate a different office for its Fundings if such designation would avoid the need for, or reduce the amount of, such compensation and will not, in the sole opinion of the Lessor, be disadvantageous to it; provided that the Lessee shall not be obligated to compensate the Lessor for any such additional costs incurred more than one hundred eighty (180) days prior to the time the Lessor first notifies the Lessee of such Additional Cost Event. A statement of the

Lessor claiming compensation under Section 29.4(a) or (b), setting forth the calculations and the basis therefor (using reasonable averaging and attribution methods), in each case in reasonable detail, shall be conclusive absent manifest error.

ARTICLE XXX

OTHER COVENANTS AND AGREEMENTS OF LESSEE

30.1 Certain Notices and Information. The Lessee will deliver to the Lessor and the Collateral Agent:

(a) within five (5) days after a Responsible Employee of the Lessee or any Affiliate of the Lessee obtains knowledge thereof, notice of (i) the occurrence of each Default or Event of Default and (ii) the commencement of any litigation which is of the type referred to in Section 5.2(f) or which, if adversely determined, could have a material adverse effect on the value of any Leased Asset or on the rights or remedies of the Lessor or any Lender Party under the Operative Documents, in each case together with a statement of an authorized officer setting forth details thereof and the action that the Lessee proposes to take with respect thereto; and

(b) from time to time, such additional information regarding (i) the business, properties, financial condition, operations or prospects of the Lessee or its Subsidiaries, or (ii) the Leased Assets, in each case as the Lessor or the Collateral Agent may reasonably request.

30.2 Certain Covenants.

(a) Financial Information. The Lessee agrees to furnish the Lessor and the Collateral Agent (a) as soon as available, and in any event within 120 days after the last day of each fiscal year of Lessee, a copy of Lessee's Annual Report on Form 10-K (including any financial information incorporated by reference therein), if any, filed with the SEC for such fiscal year; (b) within sixty (60) days after the last day of each fiscal quarter of Lessee (except the last fiscal quarter of a fiscal year), a copy of Lessee's Quarterly report on Form 10-Q, if any, filed with the SEC for such quarterly period; (c) within fifteen (15) days after filing with the SEC, all Current Reports on Form 8-K; and (d) as soon as available to Lessee, notice of any adjustment with respect to the transactions contemplated hereby resulting from any audit of the books and/or records of Lessee by any taxing authority having jurisdiction over Lessee.

In the event the Lessee is no longer obligated to file Forms 10-K and 10-Q with the SEC, the Lessee shall furnish to the Lessor and the Collateral Agent the financial statements required to be filed under such Forms on or prior to the dates specified in the preceding sentence.

(b) Mergers, Etc. The Lessee shall not merge with or into or consolidate with or into any other Person or sell, transfer, or otherwise dispose of substantially all Lessee's assets, except that Lessee may merge with or into or consolidate with or into another Person, provided that immediately after giving effect thereto, (A) no event shall occur and be continuing which constitute a Default or Event of Default, (B) Lessee is the surviving corporation or, the surviving (if not Lessee) or resulting corporation shall have expressly assumed, by an assumption agreement satisfactory to the Collateral Agent, the obligations of Lessee under this Lease and (C) Lessee or the surviving entity or resulting entity or transferee, as applicable, will have a Tangible Net Worth at least equal to the Tangible Net Worth of Lessee prior to such merger, consolidation or transfer.

(c) ERISA. As soon as possible and in any event (A) within thirty (30) days after any ERISA Event described in clause (i) of the definition of ERISA Event with respect to any Plan of Lessee or any ERISA Affiliate of Lessee has occurred and (B) within ten (10) days after any other ERISA Event with respect to any Plan of Lessee or any ERISA Affiliate of Lessee has occurred, Lessee shall deliver to Lessor and the Collateral Agent a statement of a Responsible Employee describing such ERISA Event and the action, if any, which Lessee or such ERISA Affiliate proposes to take with respect thereto.

(d) ERISA Information. Promptly after receipt thereof by Lessee or any of its ERISA Affiliates from the PBGC, Lessee shall deliver to Lessor and the Collateral Agent copies of each notice received by Lessee or such ERISA Affiliate of the PBGC's intention to terminate any Plan of Lessee or such ERISA Affiliate or to have a trustee appointed to administer any such Plan.

(e) ERISA Notice. Promptly after receipt thereof by Lessee or any ERISA Affiliate of Lessee from a Multiemployer Plan sponsor, Lessee shall deliver to Lessor and the Collateral Agent a copy of each notice received by Lessee or such ERISA Affiliate concerning the imposition or amount of withdrawal liability in an aggregate principal amount of at least \$250,000 pursuant to Section 4202 of ERISA in respect of which Lessee or such ERISA Affiliate is reasonably expected to be liable.

(f) Litigation. Lessee shall deliver to Lessor and the Collateral Agent, promptly after Lessee becomes aware of the occurrence thereof, notice of all actions, suits, proceedings or other events for which any Indemnitee will be entitled to indemnity hereunder.

(g) Debt Ratio. Lessee shall not permit the ratio of (i) the sum of (A) the aggregate amount of Indebtedness of the Lessee and its Subsidiaries determined on a consolidated basis plus (B) the aggregate outstanding amount of Preferred Stock issued by the Lessee or any of its Subsidiaries [(excluding any outstanding Preferred Stock issued by a Subsidiary of the Lessee and owned by the Lessee)] to (ii) the sum of (A) Total Liabilities of the Lessee plus (B) Total Equity of the Lessee to be greater than 0.7 to 1.0 at any time.

(h) Limitation on Liens. The Lessee shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien on any of its property, assets or revenues, whether now owned or hereafter acquired, except for: [TBD].

30.3 Other Covenants. If any covenants are set forth in any Lease Supplement, then the Lessee will observe and perform such covenants according to the terms thereof with the same force and effect as if set forth in full herein.

ARTICLE XXXI

MISCELLANEOUS

31.1 Severability. If any term or provision of this Lease or any application thereof shall be declared invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby.

31.2 Amendments and Modifications. Neither this Lease nor any provision hereof may be amended, modified, supplemented, waived, discharged or terminated except by an instrument in writing signed by the Lessor and the Lessee.

31.3 No Waiver. No failure by the Lessor or the Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

31.4 Notices. All notices, demands, requests, consents, approvals and other communications hereunder shall be in writing (including by facsimile), and directed to the address of the appropriate party as set forth in Schedule 1 hereto.

31.5 Successors and Assigns. All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

31.6 Headings and Table of Contents. The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

31.7 Counterparts. This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease by facsimile shall be effective as delivery of a manually executed counterpart of this Lease.

31.8 GOVERNING LAW. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

31.9 Jurisdiction.

(a) The Lessee hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Lease or any other Operative Document, or for recognition or enforcement of any judgment, and the Lessee hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or in such Federal court. The Lessee agrees that a final nonappealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Operative Document shall affect any right that the Lessor, the Collateral Agent or any other Lender Party may otherwise have to bring any action or proceeding relating to any Operative Document against the Lessee or its properties in the courts of any jurisdiction.

(b) The Lessee hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Lease or any other Operative Document in any court referred to in paragraph (a) of this Section. The Lessee hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) The Lessee irrevocably consents to service of process in the manner provided for notices in Section 31.4. Nothing in any Operative Document will affect the right of any party to this Lease to serve process in any other manner permitted by law.

31.10 Original Lease. The single executed original of this Lease containing the receipt of the Lessor therefor following the signature page thereof shall be the original executed counterpart of this Lease (the "Original Executed Counterpart"). To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

31.11 WAIVER OF JURY TRIAL. THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS LEASE AND/OR ANY OF THE OTHER OPERATIVE DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF SUCH PARTIES. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THEY HAVE RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LEASE AND EACH SUCH OTHER OPERATIVE DOCUMENTS.

IN WITNESS WHEREOF, the parties have caused this Lease be duly executed and delivered as of the date first above written.

BTM CAPITAL CORPORATION
as Lessor

By: _____
Name:
Title:

ENTERGY ARKANSAS, INC.
as Lessee

By: _____
Name:
Title:

THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART.

Receipt of this original counterpart of the foregoing Lease is hereby acknowledged as of the date hereof.

BTM CAPITAL CORPORATION

By: _____
Name:
Title:

SCHEDULE 1
TO MASTER LEASE AND SECURITY AGREEMENT

Notice Information

If to the Lessor, to:

BTM Capital Corporation
111 Huntington Avenue
Suite 400
Boston, MA 02199
Attention: _____
Telephone: _____
Fax: _____

with a copy to:

The Bank of Nova Scotia
One Liberty Plaza
New York, NY 10006
Attention: _____
Telephone: _____
Fax: _____

and to:

The Bank of Nova Scotia
600 Peachtree Street
Atlanta, GA 30308
Attention: _____
Telephone: _____
Fax: _____

If to the Lessee, to:

Entergy Arkansas, Inc.

Attention: _____
Telephone: _____
Fax: _____

SCHEDULE 2
TO MASTER LEASE AND SECURITY AGREEMENT

Initial Permitted Assets

[2,207] aluminum-sided rotary dump gondola railcars, each with a 4,480 cubic foot capacity (level), manufactured by Johnstown America Corporation and delivered in 1995.

273 aluminum-sided rotary dump gondola rail cars, each with a [4,480] cubic foot capacity (level), manufactured by Johnstown America Corporation and delivered in 2002.

APPENDIX 2
TO MASTER LEASE AND SECURITY AGREEMENT

CALCULATION OF BASE RENT

Base Rent payable for each Leased Asset on each Payment Date with respect to the Interest Period or the portion of the Interest Period then ending (in each case, the "Rent Payment Period") shall be payable in arrears and equal to the sum of the following:

(a) with respect to the Debt Portion for such Leased Asset, the product of the following for each day in such Rent Payment Period: (i) the principal amount of such Debt Portion, (ii) ____% plus the Bank Margin and (iii) $1/360$; plus

(b) with respect to the Lessor Portion for such Leased Asset, the product of the following for each day in such Rent Payment Period: (i) the principal amount of such Lessor Portion, (ii) ____% plus the Lessor Margin and (iii) $1/360$; plus

(c) the aggregate Periodic Amortization for such Leased Asset for such Payment Date.

All calculations of Base Rent shall be performed by the Collateral Agent and shall be submitted to the Lessor and the Lessee no later than 11:00 a.m., New York City time, on the third Business Day prior to the relevant Payment Date. Such calculations shall be conclusive, absent manifest error.

(g) At Tab 5 are certificates or other evidence of the insurance required to be maintained pursuant to the Operative Documents with respect to the such Leased Asset.

(h) On the Funding Date, all conditions precedent to such Funding set forth in Article IV of the Lease will have been satisfied.

SCHEDULE A TO FUNDING REQUEST

ALLOCATION OF FUNDING

Leased Asset Description	Lease Supp. No.	Acquisition Cost
_____	No. ____	\$ _____

The following Transaction Expenses are included in the above amounts: _____.

SCHEDULE B TO FUNDING REQUEST
INFORMATION REQUIRED
FOR FUNDING ACQUISITION OF LEASED ASSET

1. Description of the Leased Asset: _____.
2. The transferor of the Leased Asset is: _____.

EXHIBIT B
TO MASTER LEASE AND SECURITY AGREEMENT
FORM OF LESSEE'S CERTIFICATE

LESSEE'S CERTIFICATE

This Certificate is being delivered pursuant to the Master Lease and Security Agreement, dated as of _____, 2002 (the "Lease"), between BTM Capital Corporation, as Lessor, and Entergy Arkansas, Inc., as Lessee. Capitalized terms used but not otherwise defined herein have the respective meanings specified in Appendix 1 to the Lease, and the rules of the interpretation set forth in Appendix 1 to the Lease shall apply to this Certificate.

The undersigned certifies as follows:

1. Each and every representation and warranty of the Lessee contained in the Lease or any other Operative Document to which it is party is true and correct in all material respects on and as of the date hereof, except to the extent such representations and warranties relate solely to an earlier date, in which case such representations and warranties were true and correct on and as of such earlier date.
2. No Default or Event of Default has occurred and is continuing.
3. Each Operative Document to which the Lessee is a party is in full force and effect with respect to the Lessee.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of this _____ day of _____, ____.

ENTERGY ARKANSAS, INC.

By: _____
Name:
Title:

EXHIBIT C
TO MASTER LEASE AND SECURITY AGREEMENT
FORM OF LEASE SUPPLEMENT FOR EQUIPMENT

LEASE SUPPLEMENT NO. ____

This Lease Supplement No. ____ (this "Lease Supplement") is delivered pursuant to the Master Lease and Security Agreement dated as of _____, 2002 (the "Lease"), between BTM Capital Corporation, as Lessor, and Entergy Arkansas, Inc., as Lessee. Capitalized terms not otherwise defined herein are used herein as defined in Appendix 1 to the Lease.

1. The Leased Asset to which this Lease Supplement relates is described on Attachment 1 hereto.
2. The Acquisition Cost for such Leased Asset is \$_____.
3. The Guaranteed Risk Percentage for such Leased Asset is _____.
4. The Periodic Amortization for such Leased Asset will be as set forth in Attachment 2 hereto.
5. Other provisions: _____.
6. [If applicable, add a provision regarding joinder of purchase and remarketing options pursuant to Section 22.1 and 24.1 of the Lease.]

Dated as of this _____ day of _____, 200_.

LESSOR

BTM CAPITAL CORPORATION

By: _____
Name:
Title:

LESSEE

ENTERGY ARKANSAS, INC.

By: _____
Name:
Title:

Attachment 1

[Description of Leased Asset]

Equipment

Quantity

Reporting Marks

Road Numbers

[Periodic Amortization]

APPENDIX 1
TO MASTER LEASE AND SECURITY AGREEMENT

DEFINITIONS AND INTERPRETATION

- A. Interpretation. In each Operative Document, unless a clear contrary intention appears:
- (i) the singular number includes the plural number and vice versa;
 - (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Operative Documents, and, unless otherwise provided or the context otherwise requires, reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
 - (iii) reference to any gender includes each other gender;
 - (iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Operative Documents and reference to any promissory note includes any promissory note which is an extension or renewal thereof or a substitute or replacement therefor;
 - (v) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;
 - (vi) reference in any Operative Document to any Article, Section, Appendix, Schedule or Exhibit means such Article or Section thereof or Appendix, Schedule or Exhibit thereto;
 - (vii) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to an Operative Document as a whole and not to any particular Article, Section or other provision thereof;
 - (viii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;
 - (ix) "or" is not exclusive; and
 - (x) relative to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding".
- B. Accounting Terms. In each Operative Document, unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determinations and computations shall be made, in accordance with GAAP (as defined herein).

C. Conflict in Operative Documents. If there is any conflict between any Operative Documents, such Operative Document shall be interpreted and construed, if possible, so as to avoid or minimize such conflict but, to the extent (and only to the extent) of such conflict, the Lease shall prevail and control.

D. Legal Representation of the Parties. The Operative Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring any Operative Document to be construed or interpreted against the party drafting such Operative Document shall not apply to any construction or interpretation hereof or thereof.

E. Defined Terms. Unless a clear contrary intention appears, terms defined herein have the respective indicated meanings when used in each Operative Document.

"ABR Margin" means, at any time, the Bank Margin minus 100 basis points.

"Acquisition Cost" means, with respect to any Equipment, the amount of the Funding with respect to such Equipment for the purpose of acquiring title to such Equipment and paying Transaction Expenses relating to such acquisition.

"Acquisition Date" means, with respect to any Equipment, the Funding Date on which the Lessor acquires title to, or a leasehold interest in, such Equipment (or portion thereof).

"Additional Payment Date" means the last day of each Interest Period which does not end on a Scheduled Payment Date and the Expiration Date for each Leased Asset.

"Affiliate" means, when used with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"After Tax Basis" means, with respect to any payment to be received, the amount of such payment increased so that, after subtracting the amount of any taxes required to be paid by the recipient with respect to the receipt by the recipient of such payment (after taking into account any deduction to which the recipient is entitled with respect to such payment), such payment (as so reduced) is equal to the payment otherwise required to be made.

"Alteration" means Required Alteration and Optional Alteration.

"Alternate Base Rate" means, for any day, an interest rate equal to the higher of (i) the sum of the Federal Funds Effective Rate for such day plus 0.50% per annum and (ii) the base rate of the Collateral Agent as in effect on such day.

"Applicable Law" means all existing and future applicable laws, rules, regulations, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any Governmental Authority (including Environmental Laws), and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction.

"Appraisal" means, with respect to any Equipment, an appraisal, prepared by a reputable appraiser selected by the Collateral Agent, of such Equipment which, in the case of the Appraisal delivered on or prior to the Acquisition Date for such Equipment, appraises the Fair Market Sales Value of such Equipment (A) as of the Acquisition Date for such Equipment and (B) as of the fifth, sixth and seventh anniversaries of the Lease.

"Available Commitment" means, at any time, an amount equal to the excess, if any, of (i) the amount of the Total Commitment over (ii) the aggregate principal amount of all Fundings made or deemed made prior to such time.

"Bank Margin" means, on any day, the amount per annum set forth in the table below under the heading "Bank Margin" corresponding to the Credit Rating of the Lessee on such day:

<u>Credit Rating of the Lessee</u>	<u>Bank Margin (amount in basis points)</u>
1	[120.0]
2	[140.0]
3	[175.0]
4	[235.0]
5	[300.0]

provided that if the Credit Rating on any day includes two numbers, then the "Bank Margin" for such day shall be the mathematical average of the amount per annum set forth in the table above under the heading "Bank Margin" corresponding to each such number; provided, further that if the Lessee exercises one or both Renewal Options, then the "Bank Margin" in the table above shall be reset in accordance with Section 21.1 of the Lease.

"Bankruptcy Event" means any Event of Default under Section 18.1(f) or (g) of the Lease.

"Base Rent" means the amount determined under Appendix 2 to the Lease.

"BNS Agent" means The Bank of Nova Scotia, in its capacity as bank agent under the BNS Loan Agreement.

"BNS Banks" means each "Bank" as defined in the BNS Loan Agreement.

"BNS Loan Agreement" means the Committed Loan Agreement dated as of the date hereof among the Lessor, the Banks and the BNS Agent.

"BNS Note" means each "Bank Note" as defined in the BNS Loan Agreement.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Business Day" means each day which is not a day on which banks in New York or London are generally authorized or obligated, by law or executive order, to close.

"Casualty" means any loss, theft, damage or destruction of all or any portion of an Item of Equipment.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

"Certifying Party" is defined in Section 25.1 of the Lease.

"Change of Control" means (i) with respect to Entergy Corporation, _____, and (ii) with respect to the Lessee, _____.

"Claims" means any and all obligations, liabilities, losses, actions, suits, judgments, penalties, fines, claims, demands, settlements, fees, costs and expenses (including reasonable legal fees and expenses) of any nature whatsoever.

"Closing Date" is defined in Section 4.1 of the Lease.

"Code" means the Internal Revenue Code of 1986.

"Collateral Account" has the meaning given to that term in the Security and Intercreditor Agreement.

"Collateral Agent" means The Bank of Nova Scotia, in its capacity as collateral agent under the Security and Intercreditor Agreement.

"Commitment Termination Date" means _____, 2002.

"Condemnation" means any condemnation, requisition, confiscation, seizure or other taking or sale of the use, access, occupancy, easement rights or title to any Item of Equipment or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain. A "Condemnation" shall be deemed to have occurred on the earliest of the dates that use or title vests in the condemning authority.

"Conduit" means Liberty Street Funding Corp., a Delaware corporation.

"Conduit Fee Letter" means the letter agreement dated as of the date hereof between [the Lessee] and the Conduit.

"Conduit Agent" means The Bank of Nova Scotia, in its capacity as conduit agent under the Conduit Loan Agreement.

"Conduit Loan Agreement" means the Uncommitted Loan Agreement dated as of the date hereof among the Lessor, the Conduit and the Conduit Agent.

"Conduit Note" has the meaning given to that term in the Conduit Loan Agreement.

"Control" means (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, the possession directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Credit Rating" shall mean, on any day, the number set forth in the table corresponding to the rating assigned by S&P and Moody's to the senior unsecured and noncredit enhanced long-term debt securities of the Lessee on such day:

<u>S&P/Moody's Rating</u>	<u>Credit Rating Number</u>
BBB+ or higher by S&P or Baa1 or higher by Moody's	1

<u>S&P/Moody's Rating</u>	<u>Credit Rating Number</u>
BBB or higher by S&P or Baa2 or higher by Moody's	2
BBB- or higher by S&P or Baa3 or higher by Moody's	3
BB+ or higher by S&P or Ba1 or higher by Moody's	4
lower than BB or no rating by S&P and lower than Ba2 or no rating by Moody's	5

If, on any day, the S&P rating, taken alone, would result in a number that is one number greater or less than the number that would result from the Moody's rating, taken alone, on such day, then the Credit Rating for such day shall be the number that corresponds to the higher of the two ratings (with BBB+ and Baa1 being the highest ratings). If, on any day, the S&P rating, taken alone, would result in a number that is more than one number greater or less than the number that would result from the Moody's rating, taken alone, on such day, then the Credit Rating for such day shall include the numbers resulting from both such ratings.

"Debt Portion" means, with respect to any Leased Asset, an amount equal to the portion of the Lease Balance of such Leased Asset funded by the Lessor through the borrowing of Loans. The Collateral Agent's determination of such amount shall be conclusive, absent manifest error.

"Default" means any event or condition which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"Disclosure Documents" means the Lessee's (i) Annual Report on Form 10-K for the year ended December 31, 2001, and (ii) Quarterly Reports on Form 10-Q for the quarters ended March 31, 2002, June 30, 2002[, and September 30, 2002].

"Dollars" and "\$" mean dollars in lawful currency of the United States of America.

"DVB Agent" means DVB Bank AG, in its capacity as bank agent under the DVB Loan Agreement.

"DVB Banks" means each "Bank" as defined in the DVB Loan Agreement.

"DVB Fee Letter" means the letter agreement dated as of the date hereof between [the Lessee] and DVB Bank AG.

"DVB Loan Agreement" means the Committed Loan Agreement dated as of the date hereof among the Lessor, the banks party thereto and DVB Bank AG, as agent.

"DVB Note" means each "Bank Note" as defined in the DVB Loan Agreement.

"Engineer" means, with respect to any Leased Asset, any Person having expertise with such Leased Asset and who is otherwise acceptable to the Collateral Agent.

"Environmental Law" means, whenever enacted or promulgated, any applicable Federal, state, county or local law, rule, regulation, code, ordinance, license, permit, authorization, approval, covenant, criteria, guideline, administrative or court order, judgment, decree, injunction or requirement or any agreement with a Governmental Authority:

(a) relating to pollution (or the cleanup, removal, remediation or encapsulation thereof, or any other response thereto), or the regulation or protection of human health, safety or the environment, including air, water, vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life, or

(b) concerning exposure to, or the use, containment, storage, recycling, treatment, generation, discharge, emission, Release or threatened Release, transportation, processing, handling, labeling, containment, production, disposal or remediation of any Hazardous Substance, Hazardous Condition or Hazardous Activity,

in each case as amended and as now or hereafter in effect, and any common law or equitable doctrine (including injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries (whether personal or property) or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any Hazardous Substance, whether such common law or equitable doctrine is now or hereafter recognized or developed. Applicable laws include, but are not limited to, CERCLA; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321; the Refuse Act, 33 U.S.C. §§ 401 et seq.; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., each as amended and as now or hereafter in effect, and their state and local counterparts or equivalents, including any regulations promulgated thereunder.

"Environmental Violation" means any activity, occurrence or condition that violates or results in non-compliance with any Environmental Law in any material respect.

"Equipment" means any asset subject to the Lease; provided that all Equipment included in a particular Lease Supplement shall constitute a single Leased Asset.

"Equipment Documents" means the disclosure materials related to the description and specifications of the Equipment, as may be amended or supplemented from time to time, provided to the Lessor, the Conduit, the BNS Banks and the DVB Banks by the Lessee, and identified as such by the parties hereto on the Closing Date.

"Entergy Corporation" means Entergy Corporation, a _____ corporation.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which is under common control within the meaning of the regulations under Section 414(b) or (c) of the Code.

"ERISA Event" means (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, unless the 30-day notice requirement with respect thereto has been waived by the PBGC; (ii) the provision by the administrator of any Plan of notice of intent to terminate such Plan, pursuant to Section 4041(a) (2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (iii) the cessation of operations at a facility resulting in the termination of employment of more than 20% of the total number of participants in a Plan; (iv) the withdrawal by the Lessee or an ERISA Affiliate of the Lessee from a Multiemployer Plan during any plan year for which material liability may be incurred by the Lessee or such ERISA Affiliate as a result of the imposition of any withdrawal liability (within the meaning of Section 4201 of ERISA); (v) the failure by the Lessee or an ERISA Affiliate of the Lessee to make a payment to a Plan required under Section 302(f)(1) of ERISA, which failure results in the imposition of a Lien for failure to make required payments; (vi) the adoption of an amendment to a Plan requiring the provision of security to such Plan, pursuant to Section 307 of ERISA; or (vii) the institution by the PBGC of proceedings to terminate a Plan, pursuant to Section 4042 of ERISA, or the occurrence of any event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, a Plan.

"Eurodollar Rate" means, with respect to each Interest Period, the rate determined by the Collateral Agent to be the average of the rates at which Dollar deposits are offered to the major commercial banks last listed on the BBA LIBO Page (or any successor pages) (rounded upward, if necessary, to the nearest multiple of one-sixteenth of one percent) for such Interest Period or, if such offered rate is not available, then the rate per annum at which deposits in Dollars appear with respect to such Interest Period on the Telerate Page 3750 (or any successor page), in each case at or about 11:00 a.m. (London time) two Business Days prior to the beginning of such Interest Period.

"Event of Default" is defined in Section 18.1 of the Lease.

"Excess Proceeds" means, with respect to any Item of Equipment, the excess, if any, of the aggregate of all awards, compensation or insurance proceeds payable in connection with a Casualty or Condemnation over the sum of the Lease Balance paid by the Lessee pursuant to Article XVII of the Lease with respect to such Casualty or Condemnation and all proceeds received by the Lessor in connection with any sale of such Item of Equipment pursuant to the Lessor's exercise of remedies under Section 18.2 of the Lease or the Lessee's exercise of the Remarketing Option under Article XXII of the Lease.

"Expiration Date" means the later of (i) _____, 2007 and (ii) the scheduled expiration of the then current Renewal Term, if any; provided that if a Leased Asset is purchased pursuant to Section 20.1 or 20.2 of the Lease or the Lease Balance therefor is paid pursuant to Section 18.2 of the Lease, then the Expiration Date for a Leased Asset shall be the date of such purchase or payment, as the case may be.

"Fair Market Sales Value" means, with respect to any Leased Asset or any portion thereof, the amounts, which in any event shall not be less than zero, that would be paid in cash in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, for the ownership of such Leased Asset or portion. The Fair Market Sales Value of the Leased Assets shall be determined based on the assumption that, except for purposes of Article XVIII of the Lease, the Leased Assets are in the condition

and state of repair required under Section 12.1 of the Lease and the Lessee is in compliance with the other requirements of the Operative Documents.

"Federal Funds Effective Rate" means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of quotations for such day on such transaction received by the Collateral Agent from three (3) Federal funds brokers of recognized standing selected by it.

"Fee Letters" means the Conduit Fee Letter and the DVB Bank Fee Letter.

"Funding" means an advance of funds made or deemed made by the Lessor pursuant to Article III of the Lease.

"Funding Date" is defined in Section 3.2(a) of the Lease.

"Funding Request" means a funding request substantially in the form of Exhibit A to the Lease.

"GAAP" means generally accepted accounting principles, as recognized by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained on a consistent basis for the Lessee and its Subsidiaries throughout the period indicated and consistent with the prior financial practice of the Lessee and its Subsidiaries.

"Governmental Action" means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Applicable Law, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operation of any Leased Asset.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Gross Proceeds" means, with respect to any Leased Asset, (i) all amounts paid in connection with any sale of such Leased Asset pursuant to Lessor's exercise the Remarketing Option under Article XXII of the Lease less (ii) all costs and expenses of the Lessor in effecting such sale.

"Guaranteed Residual Value" means, with respect to each Leased Asset, at any time, an amount equal to the Lease Balance of such Leased Asset at such time multiplied by the Guaranteed Risk Percentage for such Leased Asset.

"Guaranteed Risk Percentage" means, with respect to each Leased Asset, the guaranteed risk percentage for such Leased Asset set forth in the Lease Supplement relating thereto, which percentage shall be determined by the Lessor (with the consent of the Lessee's accountants) in accordance with the "90%" test set forth in FASB No. 13.

"Hazardous Activity" means any activity, process, procedure or undertaking that directly or indirectly (i) produces, generates or creates any Hazardous Substance; (ii) causes or results in (or

threatens to cause or result in) the Release of any Hazardous Substance into the environment (including air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life); (iii) involves the containment or storage of any Hazardous Substance; or (iv) would be regulated as hazardous waste treatment, storage or disposal within the meaning of any Environmental Law.

"Hazardous Condition" means any condition that materially violates or threatens to materially violate, or that results in or threatens material noncompliance with, any Environmental Law.

"Hazardous Substance" means any of the following: (i) any petroleum or petroleum product, explosives, radioactive materials, asbestos, ureaformaldehyde, polychlorinated biphenyls, lead and radon gas; (ii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste, or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or human health or safety, as defined under any Environmental Law; or (iii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

"Impositions" means any and all Claims for Taxes which at any time may be levied, assessed or imposed upon or with respect to (a) any Leased Asset or any part thereof or interest therein, any Indemnatee by reason of a Leased Asset or the transactions contemplated by the Operative Documents, or the Lessee or any sublessee or user of any Leased Asset by reason of such sublease or use; (b) the financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, purchase, rental, lease, activity conducted on, delivery, insuring, use, operation, improvement, transfer, return or other disposition of such Leased Asset or any part thereof or interest therein; (c) indebtedness with respect to any Leased Asset or any part thereof or interest therein or transfer thereof; (d) the rentals, receipts or earnings arising from any Leased Asset or any part thereof or interest therein; (e) the Operative Documents or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to any Leased Asset or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract relating to the construction, acquisition or delivery of any Equipment or any part thereof or interest therein; or (h) otherwise in connection with the transactions contemplated by the Operative Documents.

Notwithstanding anything in the first paragraph of this definition (except as provided in the final paragraph of this definition) the term "Imposition" shall not mean or include claims for:

(i) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, transfer or property taxes) that are imposed under (A) the Code and that are based upon or measured by net income, net worth or capital franchise and (B) by any state or local jurisdiction or taxing authority and that are based upon or measured by net income, net worth or capital franchise, except that this clause (B) shall not apply to (and thus shall not exclude) any such Tax imposed on any Indemnatee by a state (or any local taxing authority thereof or therein) where a Leased Asset is located, possessed or used under the Lease unless such Indemnatee was subject to such Tax in such jurisdiction without regard to the transaction contemplated by the Operative Documents;

(ii) any Tax to the extent, but only to such extent, it relates to any act, event or omission that occurs, or relates to a period, after the termination of the Lease Term and the return of the Leased Assets to which such Imposition relates (but not any Tax or imposition that

relates to any period prior to the termination of the Lease Term with respect to such Leased Asset);

(iii) any Tax for so long as, but only for so long as, it is being contested in accordance with the provisions of Section 15.1 or 24.4 of the Lease, provided that the foregoing shall not limit the Lessee's obligation to advance to the relevant Indemnatee any expenses incurred by such Indemnatee in connection with such contest;

(iv) any Taxes imposed against or payable by an Indemnatee resulting from, or that would not have been imposed but for, the gross negligence or willful misconduct of such Indemnatee;

(v) Taxes imposed on or payable by an Indemnatee to the extent such Taxes would not have been imposed but for a breach by such Indemnatee or any Affiliate thereof of any of its representations, warranties or covenants set forth in the Operative Documents (unless such breach is caused by the Lessee's breach of its representations, warranties or covenants set forth in the Operative Documents);

(vi) Taxes which are included in Acquisition Cost;

(vii) Taxes that would have been imposed in the absence of the transactions contemplated by the Operative Documents and Taxes imposed on or with respect to or payable as a result of activities of an Indemnatee or Affiliate thereof unrelated to the transactions contemplated by the Operative Documents;

(viii) any Taxes imposed upon an Indemnatee with respect to any sale, assignment, transfer or other disposition of any interest in an Indemnatee or any Affiliate thereof;

(ix) Taxes to the extent resulting from such Indemnatee's failure to comply with the provisions of Section 24.4 of the Lease, which failure precludes or materially adversely affects the Lessee's ability to conduct a contest pursuant to Section 24.4 of the Lease (unless such failure is caused by the Lessee's breach of its obligations);

(x) Taxes imposed on or with respect to or payable by an Indemnatee resulting from, or that would not have been imposed but for the existence of, any Lessor Lien created by or through such Indemnatee or an Affiliate thereof and not caused by acts or omissions of the Lessee, unless required to be removed by the Lessee; and

(xi) Any Tax imposed against or payable by an Indemnatee to the extent that the amount of such Tax exceeds the amount of such Tax that would have been imposed against or payable by such Indemnatee (or, if less, that would have been subject to indemnification under Section 24.3 of the Lease) if such Indemnatee were not a direct or indirect successor, transferee or assign of one of the original Indemnitees; provided, however, that this exclusion (xi) shall not apply if such direct or indirect successor, transferee or assign acquired its interest with the consent of the Lessee or as a result of a transfer while an Event of Default shall have occurred and is continuing.

Notwithstanding the foregoing, the exclusion from the definition of Impositions set forth in clause (i) above shall not apply to any Taxes or any increase in Taxes (in either case, measured net of any Tax savings or reductions which an Indemnatee is able, through the use of reasonable mitigation efforts, actually to realize) imposed on an Indemnatee, to the extent that such Taxes would not have been imposed

or such Tax increase would not have occurred if the Lessee were the owner of the Leased Assets and the Lessor or the Rent Purchasers had financed the Leased Assets by making loans directly to the Lessee.

"Imputed Carrying Cost" means, with respect to any Leased Asset, the cost to the Lessor of maintaining its investment in such Leased Asset after the Expiration Date applicable thereto determined by multiplying (i) the average daily Lease Balance of such Leased Asset outstanding (after giving effect to the receipt of the Guaranteed Residual Value therefor), (ii) the number of days from the Expiration Date to the date of sale of such Leased Asset, (iii) the Overdue Rate and (iv) 1/360.

"Indebtedness" means for any Person, without duplication, (i) all indebtedness or other obligations of such Person for borrowed money and all indebtedness of such Person with respect to any other items (other than income taxes payable, accounts payable, deferred taxes and deferred credits) which would, in accordance with GAAP, be classified as a liability on the balance sheet of such Person, (ii) all obligations of such Person to pay the deferred purchase price of property or services, (iii) all obligations of such Person (contingent or otherwise) under reimbursement or similar agreements with respect to the issuance of letters of credit, (iv) all indebtedness or other obligations of such Person under or in respect of any swap, cap, collar or other financial hedging arrangement, (v) all indebtedness or other obligations of any other Person of the type specified in clause (i), (ii), (iii) or (iv) above, the payment or collection of which such Person has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which such Person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase products or securities, to provide funds for payment, to maintain working capital or other balance sheet conditions or otherwise to assure a creditor against loss, and (vi) all indebtedness or other obligations of any other Person of the type specified in clause (i), (ii), (iii) or (iv) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien, upon or in property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or becomes liable for the payment of such indebtedness or obligations.

"Indemnitee" means the Lessor, the Collateral Agent, the Conduit, the Conduit Agent, the BNS Banks, the BNS Agent, the Liquidity Providers, the Liquidity Agent, the DVB Banks, the DVB Agent, the Swap Counterparty, and each of their respective successors, assigns, directors, officers, employees, Affiliates and agents.

"Initial Permitted Assets" means the assets listed on Schedule 2 to the Lease.

"Insurance Requirements" means all terms and conditions of any insurance policy required by the Lease to be maintained by the Lessee, and all requirements of the issuer of any such policy.

"Interest Period" means, with respect to each Funding, (i) the period commencing on the Funding Date therefor and ending on the next succeeding Scheduled Payment Date and (ii) each successive three-month period thereafter commencing on the immediately preceding Scheduled Payment Date and ending on the succeeding Scheduled Payment Date.

"Interest Rate Hedge" means the ISDA Master Agreement (including any schedule thereto and confirmation thereunder) dated as of the date hereof between the Lessor and the Swap Counterparty.

"Item of Equipment" or **"Item"** means, with respect to the Initial Permitted Assets, one of the railcars leased to Lessee under the Lease.

"Lease" means the Master Lease and Security Agreement dated as of the date hereof between the Lessor and the Lessee.

"Lease Balance" means (a) with respect to each Leased Asset, as of any date of determination, the sum of all Fundings for such Leased Asset made or deemed made under the Lease on or before such date, less the sum of (i) all Periodic Amortization paid by the Lessee with respect thereto on or before such date and (ii) all proceeds of any Casualty or Condemnation affecting any item of Equipment included in such Leased Asset and all other amounts which in each case have been applied to reduce the Lease Balance for such Leased Asset pursuant to the Lease and (b) with respect to each Item of Equipment, the pro rata portion of the amount in clause (a) allocated to such Item of Equipment.

"Lease Supplement" means, with respect to each Leased Asset, a lease supplement substantially in the form of Exhibit C to the Lease duly completed as to such Leased Asset.

"Lease Term" means, with respect to each Leased Asset, the period commencing on the Acquisition Date for such Leased Asset and ending on the Expiration Date for such Leased Asset.

"Leased Asset" means any Equipment acquired by the Lessor pursuant to the Lease.

"Lender Party" means the Conduit, the BNS Agent, the BNS Banks, the DVB Agent, the DVB Banks, the Liquidity Providers and the Swap Counterparty.

"Lessee" means Entergy Arkansas, Inc., an Arkansas corporation, as lessee under the Lease.

"Lessee's Consent" means the Lessee's Consent dated as of the date hereof among the Lessee, the Lessor and the Collateral Agent.

"Lessor" means BTM Capital Corporation, a Delaware corporation.

"Lessor Lien" means any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against the Lessor not resulting from the transactions contemplated by the Operative Documents, (b) any act or omission of the Lessor which is not required by the Operative Documents or is in violation of any of the terms of the Operative Documents, (c) any claim against the Lessor with respect to Taxes or Transaction Expenses against which Lessee is not required to indemnify Lessor pursuant to the Lease or (d) any claim against the Lessor arising out of any transfer by the Lessor of all or any portion of its interest in any Leased Asset or the Operative Documents other than the transfer of title to or possession of any Leased Asset by the Lessor pursuant to and in accordance with the Operative Documents or pursuant to the exercise of the remedies set forth in the Operative Documents.

"Lessor Margin" means, on any day, the amount per annum set forth in the table below under the heading "Lessor Margin" corresponding to the Credit Rating of the Lessee on such day:

Credit Rating of the Lessee	Lessor Margin (amount in basis points)
1	225.0
2	250.0
3	275.0
4	350.0
5	400.0

provided that if the Credit Rating on any day includes two numbers, then the "Lessor Margin" for such day shall be the mathematical average of the amount per annum set forth in the table above under the heading "Lessor Margin" corresponding to each such number; provided, further that if the Lessee

exercises one or both Renewal Options, then the "Lessor Margin" in the table above shall be reset in accordance with Section 21.1 of the Lease.

"Lessor Portion" means, with respect to any Leased Asset, an amount equal to the portion of the Lease Balance of such Leased Asset funded by the Lessor other than through the borrowing of Loans.

"Lien" means any mortgage, deed of trust, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including any irrevocable license, conditional sale or other title retention agreement, any lease in the nature thereof, or any other right of or arrangement with any creditor to have its claim satisfied out of any specified property or asset with the proceeds therefrom prior to the satisfaction of the claims of the general creditors of the owner thereof, whether or not filed or recorded, or the filing of, or agreement to execute as "debtor", any financing or continuation statement under the Uniform Commercial Code of any jurisdiction or any federal, state or local lien imposed pursuant to any Environmental Law.

"Liquidity Agent" means The Bank of Nova Scotia, in its capacity as administrator and liquidity agent under the Liquidity Agreement.

"Liquidity Agreement" means the Liquidity Asset Purchase Agreement dated as of the date hereof among the Liquidity Providers, the Conduit and the Liquidity Agent.

"Liquidity Providers" means the "Purchasers" as defined in the Liquidity Agreement.

"Loans" means each loan made pursuant to the Loan Agreements.

"Loan Agreements" means the Conduit Loan Agreement, the BNS Loan Agreement and the DVB Loan Agreement.

"Marketing Period" means, with respect to any Leased Asset, if the Lessee has given notice of its exercise of the Remarketing Option for such Leased Asset, the period commencing on the date six (6) months prior to the Expiration Date for such Leased Asset and ending on such Expiration Date.

"Material Adverse Change" means a material adverse change in (i) the financial condition of the Lessee and its Subsidiaries, taken as a whole, or (ii) the ability of the Lessee to pay or perform its obligations under the Operative Documents.

"Memorandum of Lease" means the Memorandum of Lease dated as of the date hereof between the Lessor and the Lessee relating to the Lease, which Memorandum of Lease shall be in form suitable for recordation with the Surface Transportation Board in accordance with 49 CFR 1033.1.

"Monthly Date" means the _____ (___th) day of each calendar month or, if any such day is not a Business Day, the next following day which is a Business Day.

"Moody's" shall mean Moody's Investors Service or any successor in interest that is a nationally recognized rating agency.

"Multiemployer Plan" shall have the meaning assigned to the term "multiemployer plan" in Section 3 (37) of ERISA.

"Operative Documents" means the following:

- (a) the Lease;
- (b) the Lessee's Consent;
- (c) each Lease Supplement;
- (d) the Conduit Loan Agreement;
- (e) the Conduit Note;
- (f) the BNS Loan Agreement;
- (g) the BNS Notes;
- (h) the Liquidity Agreement;
- (i) the DVB Loan Agreement;
- (j) the DVB Notes;
- (k) the Security and Intercreditor Agreement;
- (l) the Memorandum of Lease;
- (m) the Interest Rate Hedge;
- (n) the Fee Letters; and
- (o) each Funding Request.

"Optional Alteration" is defined in Section 13.1 of the Lease.

"Overdue Rate" means the Alternate Base Rate plus the Lessor Margin plus 2.00%.

"Payment Date" means each Scheduled Payment Date and each Additional Payment Date.

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor entity) established under ERISA.

"Periodic Amortization" means, with respect to any period during the Lease Term of any Leased Asset, the amount of amortization specified for such period in the Lease Supplement for such Leased Asset.

"Permitted Assets" means the Initial Permitted Assets and any other assets approved by the Lessor, the Conduit, each BNS Bank, each DVB Bank and each Liquidity Provider.

"Permitted Contest" is defined in Section 15.1(a) of the Lease.

"Permitted Liens" means, with respect to any Leased Asset:

- (i) any rights in favor of the Lessor under the Operative Documents and any rights of any Persons entitled to use of the Equipment in accordance with the Lease;
- (ii) any Lien, claim, security interest or encumbrance (including, without limitation, Liens of landlords, carriers, warehousemen, mechanics or materialmen) in favor of any Person securing payment of the price of goods or services provided in the ordinary course of business for amounts the payment of which is not overdue or is being contested in accordance with the provisions of Section 15.1 of the Lease;

(iii) Lessor Liens; and

(iv) any Lien for current taxes, assessments or other governmental charges which are not delinquent or the validity of which is being contested in accordance with the provisions of Section 15.1 of the Lease.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, governmental authority, limited liability company or any other entity.

"Plan" shall mean (a) with respect to Lessee, any plan described in Section 4021(a) of ERISA and not excluded pursuant to Section 4021(b) thereof, under which Lessee or any ERISA Affiliate of Lessee has any liability, and (b) with respect to any other person, any employee benefit plan or other plan established or maintained by such person for the benefit of such person's employees and to which Title IV of ERISA applies.

"Preferred Stock" means, with respect to any Person, any capital stock of such Person ranking prior, as to dividends and distributions upon liquidation, dissolution or winding up of such Person, to the common stock (or its equivalent) of such Person.

"Premium Amount" means, with respect to any Leased Asset on any date, an amount equal to (i) two percent (2%) of the Lease Balance for such Leased Asset, if such date occurs on or prior to the sixth anniversary of the date of the Lease, or (ii) one percent (1%) of the Lease Balance for such Leased Asset, if such date occurs after the sixth anniversary of the Lease and on or prior to the seventh anniversary of the Lease.

"Purchase Notice" is defined in Section 20.1 of the Lease.

"Purchase Option" is defined in Section 20.1 of the Lease.

"Purchase Option Price" is defined in Section 20.1 of the Lease.

"Release" means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

"Remarketing Option" is defined in Section 22.1 of the Lease.

"Renewal Option" is defined in Section 21.1 of the Lease.

"Renewal Term" is defined in Section 21.1 of the Lease.

"Rent" means, collectively, the Base Rent and the Supplemental Rent, in each case payable under the Lease.

"Reportable Event" has the meaning set forth in Title IV of ERISA.

"Requesting Party" is defined in Section 25.1 of the Lease.

"Required Alteration" is defined in Section 13.1 of the Lease.

"Requirements of Law" means all Federal, state, county, municipal and other governmental statutes, laws (including Environmental Laws), rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting any Leased Asset or the demolition, construction, operation, use or alteration thereof, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to such Leased Asset or in any way limit the use and enjoyment thereof (including all

building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. § 1201 et seq. and any other similar Federal, state or local laws or ordinances and the regulations promulgated thereunder), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto.

"Responsible Employee" means, with respect to any Person, the Chairman, the President, any Vice President, the Controller or the Treasurer of such Person.

"S&P" shall mean Standard & Poor's, a division of McGraw-Hill Companies, or any successor in interest that is a nationally recognized rating agency.

"Scheduled Payment Date" means the Monthly Date in each _____, _____, _____, and _____ occurring after the date of the Lease.

"SEC" means the Securities and Exchange Commission.

"Security and Intercreditor Agreement" means the Security and Intercreditor Agreement dated as of the date hereof between the Lessor and the Collateral Agent.

"Significant Casualty" means (a) a Casualty that results in an insurance settlement with respect to any Item of Equipment on the basis of a total loss or constructive total loss or (b) a Casualty that in the reasonable judgment of the Collateral Agent either (i) renders any Item of Equipment permanently unsuitable for use as an asset of the type contemplated by the Lease or (ii) is such that repair of such Item of Equipment to substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible to effect on or before the Expiration Date for such Item of Equipment.

"Solvent" means, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature and (d) such Person is not engaged in business or in a transaction, and is not about to engage in business or in a transaction, for which such Person's property would constitute unreasonably small capital.

"Subsidiary" means, with respect to any corporation (the "parent"), a corporation or partnership of which the parent, at the time in respect of which such term is used, owns directly, or controls with power to vote, indirectly through one or more Subsidiaries, shares of greater than fifty percent (50%) of its voting capital stock.

"Supplemental Rent" means all amounts, liabilities and obligations (other than Base Rent) which Lessee assumes or agrees to pay to Lessor or any other Person under the Lease or under any of the other Operative Documents.

"Swap Counterparty" means The Bank of Tokyo – Mitsubishi, Ltd. – Capital Markets Group, in its capacity as provider of the Interest Rate Hedge.

"Tangible Net Worth" means, with respect to any Person, _____.

"Taxes" means all U.S. federal, state, local or foreign taxes, levies, fees, imposts, duties, charges, assessments or withholdings of any nature whatsoever including, without limitation, (i) real and personal property taxes, including personal property taxes on any property covered by the Lease that is classified

by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) any excise taxes; (iv) real estate transfer taxes, conveyance taxes, mortgage taxes, intangible taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, gross receipts, privilege and doing business taxes, license and registration fees; and (vi) assessments on any Leased Asset, including all assessments for public improvements or benefits, whether or not such improvements are commenced or completed prior to the Expiration Date for such Leased Asset, and in each case all interest, additions to tax and penalties thereon.

"35 Act" means the Public Utility Holding Company Act of 1935.

"Total Commitment" means \$[80,012,970].

"Total Equity" means, with respect to any Person, _____.

"Total Liabilities" means, with respect to any Person, _____.

"Transaction Expenses" means all costs and expenses incurred in connection with the preparation, execution and delivery of the Operative Documents and the transactions contemplated by the Operative Documents including:

- (a) the reasonable fees, out-of-pocket expenses and disbursements of counsel for each of the Lessor, the Collateral Agent and the Lessee (and, in the case of the Lessee, the reasonable fees, out-of-pocket expenses and disbursements of independent public accountants) in negotiating the terms of the Operative Documents and the other transaction documents, preparing for the closing under, and rendering opinions in connection with, such transactions and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Documents;
- (b) the reasonable fees, out-of-pocket expenses and disbursements of counsel for the Lessor, the Collateral Agent and the other Lender Parties in connection with (1) any amendment, supplement, waiver or consent with respect to any Operative Documents; and (2) any enforcement of any rights or remedies against the Lessee in respect of the Operative Documents;
- (c) any other reasonable fees (including arrangement fees allocated to the Leased Assets), out-of-pocket expenses, disbursements or costs of the Lessor, the Collateral Agent and the other Lender Parties payable to any such party pursuant to any of the Operative Documents;
- (d) any Taxes and fees incurred in recording, registering or filing any Operative Document or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Documents;
- (e) any title fees, premiums and escrow costs and other expenses relating to title insurance and the closings contemplated by the Operative Documents;
- (f) any fees, costs, premiums or expenses incurred in connection with the purchase of any residual value insurance; and
- (g) any expenses relating to an Appraisal

"Uniform Commercial Code" and "UCC" mean the Uniform Commercial Code as in effect in any applicable jurisdiction.

APPENDIX 1
TO MASTER LEASE AND SECURITY AGREEMENT

DEFINITIONS AND INTERPRETATION

A. Interpretation. In each Operative Document, unless a clear contrary intention appears:

- (i) the singular number includes the plural number and vice versa;
- (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Operative Documents, and, unless otherwise provided or the context otherwise requires, reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (iii) reference to any gender includes each other gender;
- (iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Operative Documents and reference to any promissory note includes any promissory note which is an extension or renewal thereof or a substitute or replacement therefor;
- (v) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;
- (vi) reference in any Operative Document to any Article, Section, Appendix, Schedule or Exhibit means such Article or Section thereof or Appendix, Schedule or Exhibit thereto;
- (vii) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to an Operative Document as a whole and not to any particular Article, Section or other provision thereof;
- (viii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;
- (ix) "or" is not exclusive; and
- (x) relative to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding".

B. Accounting Terms. In each Operative Document, unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determinations and computations shall be made, in accordance with GAAP (as defined herein).

C. Conflict in Operative Documents. If there is any conflict between any Operative Documents, such Operative Document shall be interpreted and construed, if possible, so as to avoid or minimize such conflict but, to the extent (and only to the extent) of such conflict, the Lease shall prevail and control.

D. Legal Representation of the Parties. The Operative Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring any Operative Document to be construed or interpreted against the party drafting such Operative Document shall not apply to any construction or interpretation hereof or thereof.

E. Defined Terms. Unless a clear contrary intention appears, terms defined herein have the respective indicated meanings when used in each Operative Document.

"ABR Margin" means, at any time, the Bank Margin minus 100 basis points.

"Acquisition Cost" means, with respect to any Equipment, the amount of the Funding with respect to such Equipment for the purpose of acquiring title to such Equipment and paying Transaction Expenses relating to such acquisition.

"Acquisition Date" means, with respect to any Equipment, the Funding Date on which the Lessor acquires title to, or a leasehold interest in, such Equipment (or portion thereof).

"Additional Payment Date" means the last day of each Interest Period which does not end on a Scheduled Payment Date and the Expiration Date for each Leased Asset.

"Affiliate" means, when used with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"After Tax Basis" means, with respect to any payment to be received, the amount of such payment increased so that, after subtracting the amount of any taxes required to be paid by the recipient with respect to the receipt by the recipient of such payment (after taking into account any deduction to which the recipient is entitled with respect to such payment), such payment (as so reduced) is equal to the payment otherwise required to be made.

"Alteration" means Required Alteration and Optional Alteration.

"Alternate Base Rate" means, for any day, an interest rate equal to the higher of (i) the sum of the Federal Funds Effective Rate for such day plus 0.50% per annum and (ii) the base rate of the Collateral Agent as in effect on such day.

"Applicable Law" means all existing and future applicable laws, rules, regulations, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any Governmental Authority (including Environmental Laws), and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction.

"Appraisal" means, with respect to any Equipment, an appraisal, prepared by a reputable appraiser selected by the Collateral Agent, of such Equipment which, in the case of the Appraisal delivered on or prior to the Acquisition Date for such Equipment, appraises the Fair Market Sales Value of such Equipment (A) as of the Acquisition Date for such Equipment and (B) as of the fifth, sixth and seventh anniversaries of the Lease.

"Available Commitment" means, at any time, an amount equal to the excess, if any, of (i) the amount of the Total Commitment over (ii) the aggregate principal amount of all Fundings made or deemed made prior to such time.

"Bank Margin" means, on any day, the amount per annum set forth in the table below under the heading "Bank Margin" corresponding to the Credit Rating of the Lessee on such day:

Credit Rating of the Lessee	Bank Margin (amount in basis points)
1	[120.0]
2	[140.0]
3	[175.0]
4	[235.0]
5	[300.0]

provided that if the Credit Rating on any day includes two numbers, then the "Bank Margin" for such day shall be the mathematical average of the amount per annum set forth in the table above under the heading "Bank Margin" corresponding to each such number; provided, further that if the Lessee exercises one or both Renewal Options, then the "Bank Margin" in the table above shall be reset in accordance with Section 21.1 of the Lease.

"Bankruptcy Event" means any Event of Default under Section 18.1(f) or (g) of the Lease.

"Base Rent" means the amount determined under Appendix 2 to the Lease.

"BNS Agent" means The Bank of Nova Scotia, in its capacity as bank agent under the BNS Loan Agreement.

"BNS Banks" means each "Bank" as defined in the BNS Loan Agreement.

"BNS Loan Agreement" means the Committed Loan Agreement dated as of the date hereof among the Lessor, the Banks and the BNS Agent.

"BNS Note" means each "Bank Note" as defined in the BNS Loan Agreement.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Business Day" means each day which is not a day on which banks in New York or London are generally authorized or obligated, by law or executive order, to close.

"Casualty" means any loss, theft, damage or destruction of all or any portion of an Item of Equipment.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

"Certifying Party" is defined in Section 25.1 of the Lease.

"Change of Control" means (i) with respect to Entergy Corporation, _____, and (ii) with respect to the Lessee, _____.

"Claims" means any and all obligations, liabilities, losses, actions, suits, judgments, penalties, fines, claims, demands, settlements, fees, costs and expenses (including reasonable legal fees and expenses) of any nature whatsoever.

"Closing Date" is defined in Section 4.1 of the Lease.

"Code" means the Internal Revenue Code of 1986.

"Collateral Account" has the meaning given to that term in the Security and Intercreditor Agreement.

"Collateral Agent" means The Bank of Nova Scotia, in its capacity as collateral agent under the Security and Intercreditor Agreement.

"Commitment Termination Date" means _____, 2002.

"Condemnation" means any condemnation, requisition, confiscation, seizure or other taking or sale of the use, access, occupancy, easement rights or title to any Item of Equipment or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain. A "Condemnation" shall be deemed to have occurred on the earliest of the dates that use or title vests in the condemning authority.

"Conduit" means Liberty Street Funding Corp., a Delaware corporation.

"Conduit Fee Letter" means the letter agreement dated as of the date hereof between [the Lessee] and the Conduit.

"Conduit Agent" means The Bank of Nova Scotia, in its capacity as conduit agent under the Conduit Loan Agreement.

"Conduit Loan Agreement" means the Uncommitted Loan Agreement dated as of the date hereof among the Lessor, the Conduit and the Conduit Agent.

"Conduit Note" has the meaning given to that term in the Conduit Loan Agreement.

"Control" means (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, the possession directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Credit Rating" shall mean, on any day, the number set forth in the table corresponding to the rating assigned by S&P and Moody's to the senior unsecured and noncredit enhanced long-term debt securities of the Lessee on such day:

<u>S&P/Moody's Rating</u>	<u>Credit Rating Number</u>
BBB+ or higher by S&P or Baa1 or higher by Moody's	1

<u>S&P/Moody's Rating</u>	<u>Credit Rating Number</u>
BBB or higher by S&P or Baa2 or higher by Moody's	2
BBB- or higher by S&P or Baa3 or higher by Moody's	3
BB+ or higher by S&P or Ba1 or higher by Moody's	4
lower than BB or no rating by S&P and lower than Ba2 or no rating by Moody's	5

If, on any day, the S&P rating, taken alone, would result in a number that is one number greater or less than the number that would result from the Moody's rating, taken alone, on such day, then the Credit Rating for such day shall be the number that corresponds to the higher of the two ratings (with BBB+ and Baa1 being the highest ratings). If, on any day, the S&P rating, taken alone, would result in a number that is more than one number greater or less than the number that would result from the Moody's rating, taken alone, on such day, then the Credit Rating for such day shall include the numbers resulting from both such ratings.

"Debt Portion" means, with respect to any Leased Asset, an amount equal to the portion of the Lease Balance of such Leased Asset funded by the Lessor through the borrowing of Loans. The Collateral Agent's determination of such amount shall be conclusive, absent manifest error.

"Default" means any event or condition which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"Disclosure Documents" means the Lessee's (i) Annual Report on Form 10-K for the year ended December 31, 2001, and (ii) Quarterly Reports on Form 10-Q for the quarters ended March 31, 2002, June 30, 2002[, and September 30, 2002].

"Dollars" and "\$" mean dollars in lawful currency of the United States of America.

"DVB Agent" means DVB Bank AG, in its capacity as bank agent under the DVB Loan Agreement.

"DVB Banks" means each "Bank" as defined in the DVB Loan Agreement.

"DVB Fee Letter" means the letter agreement dated as of the date hereof between [the Lessee] and DVB Bank AG.

"DVB Loan Agreement" means the Committed Loan Agreement dated as of the date hereof among the Lessor, the banks party thereto and DVB Bank AG, as agent.

"DVB Note" means each "Bank Note" as defined in the DVB Loan Agreement.

"Engineer" means, with respect to any Leased Asset, any Person having expertise with such Leased Asset and who is otherwise acceptable to the Collateral Agent.

"Environmental Law" means, whenever enacted or promulgated, any applicable Federal, state, county or local law, rule, regulation, code, ordinance, license, permit, authorization, approval, covenant, criteria, guideline, administrative or court order, judgment, decree, injunction or requirement or any agreement with a Governmental Authority:

(a) relating to pollution (or the cleanup, removal, remediation or encapsulation thereof, or any other response thereto), or the regulation or protection of human health, safety or the environment, including air, water, vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life, or

(b) concerning exposure to, or the use, containment, storage, recycling, treatment, generation, discharge, emission, Release or threatened Release, transportation, processing, handling, labeling, containment, production, disposal or remediation of any Hazardous Substance, Hazardous Condition or Hazardous Activity,

in each case as amended and as now or hereafter in effect, and any common law or equitable doctrine (including injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries (whether personal or property) or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any Hazardous Substance, whether such common law or equitable doctrine is now or hereafter recognized or developed. Applicable laws include, but are not limited to, CERCLA; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321; the Refuse Act, 33 U.S.C. §§ 401 et seq.; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., each as amended and as now or hereafter in effect, and their state and local counterparts or equivalents, including any regulations promulgated thereunder.

"Environmental Violation" means any activity, occurrence or condition that violates or results in non-compliance with any Environmental Law in any material respect.

"Equipment" means any asset subject to the Lease; provided that all Equipment included in a particular Lease Supplement shall constitute a single Leased Asset.

"Equipment Documents" means the disclosure materials related to the description and specifications of the Equipment, as may be amended or supplemented from time to time, provided to the Lessor, the Conduit, the BNS Banks and the DVB Banks by the Lessee, and identified as such by the parties hereto on the Closing Date.

"Entergy Corporation" means Entergy Corporation, a _____ corporation.

"ERISA" means the Employee Retirement Income Security Act of 1974.

and state of repair required under Section 12.1 of the Lease and the Lessee is in compliance with the other requirements of the Operative Documents.

"Federal Funds Effective Rate" means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of quotations for such day on such transaction received by the Collateral Agent from three (3) Federal funds brokers of recognized standing selected by it.

"Fee Letters" means the Conduit Fee Letter and the DVB Bank Fee Letter.

"Funding" means an advance of funds made or deemed made by the Lessor pursuant to Article III of the Lease.

"Funding Date" is defined in Section 3.2(a) of the Lease.

"Funding Request" means a funding request substantially in the form of Exhibit A to the Lease.

"GAAP" means generally accepted accounting principles, as recognized by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained on a consistent basis for the Lessee and its Subsidiaries throughout the period indicated and consistent with the prior financial practice of the Lessee and its Subsidiaries.

"Governmental Action" means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Applicable Law, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operation of any Leased Asset.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Gross Proceeds" means, with respect to any Leased Asset, (i) all amounts paid in connection with any sale of such Leased Asset pursuant to Lessor's exercise the Remarketing Option under Article XXII of the Lease less (ii) all costs and expenses of the Lessor in effecting such sale.

"Guaranteed Residual Value" means, with respect to each Leased Asset, at any time, an amount equal to the Lease Balance of such Leased Asset at such time multiplied by the Guaranteed Risk Percentage for such Leased Asset.

"Guaranteed Risk Percentage" means, with respect to each Leased Asset, the guaranteed risk percentage for such Leased Asset set forth in the Lease Supplement relating thereto, which percentage shall be determined by the Lessor (with the consent of the Lessee's accountants) in accordance with the "90%" test set forth in FASB No. 13.

"Hazardous Activity" means any activity, process, procedure or undertaking that directly or indirectly (i) produces, generates or creates any Hazardous Substance; (ii) causes or results in (or

threatens to cause or result in) the Release of any Hazardous Substance into the environment (including air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life); (iii) involves the containment or storage of any Hazardous Substance; or (iv) would be regulated as hazardous waste treatment, storage or disposal within the meaning of any Environmental Law.

"Hazardous Condition" means any condition that materially violates or threatens to materially violate, or that results in or threatens material noncompliance with, any Environmental Law.

"Hazardous Substance" means any of the following: (i) any petroleum or petroleum product, explosives, radioactive materials, asbestos, ureaformaldehyde, polychlorinated biphenyls, lead and radon gas; (ii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste, or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or human health or safety, as defined under any Environmental Law; or (iii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

"Impositions" means any and all Claims for Taxes which at any time may be levied, assessed or imposed upon or with respect to (a) any Leased Asset or any part thereof or interest therein, any Indemnitee by reason of a Leased Asset or the transactions contemplated by the Operative Documents, or the Lessee or any sublessee or user of any Leased Asset by reason of such sublease or use; (b) the financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, purchase, rental, lease, activity conducted on, delivery, insuring, use, operation, improvement, transfer, return or other disposition of such Leased Asset or any part thereof or interest therein; (c) indebtedness with respect to any Leased Asset or any part thereof or interest therein or transfer thereof; (d) the rentals, receipts or earnings arising from any Leased Asset or any part thereof or interest therein; (e) the Operative Documents or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to any Leased Asset or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract relating to the construction, acquisition or delivery of any Equipment or any part thereof or interest therein; or (h) otherwise in connection with the transactions contemplated by the Operative Documents.

Notwithstanding anything in the first paragraph of this definition (except as provided in the final paragraph of this definition) the term "Imposition" shall not mean or include claims for:

(i) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, transfer or property taxes) that are imposed under (A) the Code and that are based upon or measured by net income, net worth or capital franchise and (B) by any state or local jurisdiction or taxing authority and that are based upon or measured by net income, net worth or capital franchise, except that this clause (B) shall not apply to (and thus shall not exclude) any such Tax imposed on any Indemnitee by a state (or any local taxing authority thereof or therein) where a Leased Asset is located, possessed or used under the Lease unless such Indemnitee was subject to such Tax in such jurisdiction without regard to the transaction contemplated by the Operative Documents;

(ii) any Tax to the extent, but only to such extent, it relates to any act, event or omission that occurs, or relates to a period, after the termination of the Lease Term and the return of the Leased Assets to which such Imposition relates (but not any Tax or imposition that

relates to any period prior to the termination of the Lease Term with respect to such Leased Asset);

(iii) any Tax for so long as, but only for so long as, it is being contested in accordance with the provisions of Section 15.1 or 24.4 of the Lease, provided that the foregoing shall not limit the Lessee's obligation to advance to the relevant Indemnatee any expenses incurred by such Indemnatee in connection with such contest;

(iv) any Taxes imposed against or payable by an Indemnatee resulting from, or that would not have been imposed but for, the gross negligence or willful misconduct of such Indemnatee;

(v) Taxes imposed on or payable by an Indemnatee to the extent such Taxes would not have been imposed but for a breach by such Indemnatee or any Affiliate thereof of any of its representations, warranties or covenants set forth in the Operative Documents (unless such breach is caused by the Lessee's breach of its representations, warranties or covenants set forth in the Operative Documents);

(vi) Taxes which are included in Acquisition Cost;

(vii) Taxes that would have been imposed in the absence of the transactions contemplated by the Operative Documents and Taxes imposed on or with respect to or payable as a result of activities of an Indemnatee or Affiliate thereof unrelated to the transactions contemplated by the Operative Documents;

(viii) any Taxes imposed upon an Indemnatee with respect to any sale, assignment, transfer or other disposition of any interest in an Indemnatee or any Affiliate thereof;

(ix) Taxes to the extent resulting from such Indemnatee's failure to comply with the provisions of Section 24.4 of the Lease, which failure precludes or materially adversely affects the Lessee's ability to conduct a contest pursuant to Section 24.4 of the Lease (unless such failure is caused by the Lessee's breach of its obligations);

(x) Taxes imposed on or with respect to or payable by an Indemnatee resulting from, or that would not have been imposed but for the existence of, any Lessor Lien created by or through such Indemnatee or an Affiliate thereof and not caused by acts or omissions of the Lessee, unless required to be removed by the Lessee; and

(xi) Any Tax imposed against or payable by an Indemnatee to the extent that the amount of such Tax exceeds the amount of such Tax that would have been imposed against or payable by such Indemnatee (or, if less, that would have been subject to indemnification under Section 24.3 of the Lease) if such Indemnatee were not a direct or indirect successor, transferee or assign of one of the original Indemnitees; provided, however, that this exclusion (xi) shall not apply if such direct or indirect successor, transferee or assign acquired its interest with the consent of the Lessee or as a result of a transfer while an Event of Default shall have occurred and is continuing.

Notwithstanding the foregoing, the exclusion from the definition of Impositions set forth in clause (i) above shall not apply to any Taxes or any increase in Taxes (in either case, measured net of any Tax savings or reductions which an Indemnatee is able, through the use of reasonable mitigation efforts, actually to realize) imposed on an Indemnatee, to the extent that such Taxes would not have been imposed

or such Tax increase would not have occurred if the Lessee were the owner of the Leased Assets and the Lessor or the Rent Purchasers had financed the Leased Assets by making loans directly to the Lessee.

"Imputed Carrying Cost" means, with respect to any Leased Asset, the cost to the Lessor of maintaining its investment in such Leased Asset after the Expiration Date applicable thereto determined by multiplying (i) the average daily Lease Balance of such Leased Asset outstanding (after giving effect to the receipt of the Guaranteed Residual Value therefor), (ii) the number of days from the Expiration Date to the date of sale of such Leased Asset, (iii) the Overdue Rate and (iv) 1/360.

"Indebtedness" means for any Person, without duplication, (i) all indebtedness or other obligations of such Person for borrowed money and all indebtedness of such Person with respect to any other items (other than income taxes payable, accounts payable, deferred taxes and deferred credits) which would, in accordance with GAAP, be classified as a liability on the balance sheet of such Person, (ii) all obligations of such Person to pay the deferred purchase price of property or services, (iii) all obligations of such Person (contingent or otherwise) under reimbursement or similar agreements with respect to the issuance of letters of credit, (iv) all indebtedness or other obligations of such Person under or in respect of any swap, cap, collar or other financial hedging arrangement, (v) all indebtedness or other obligations of any other Person of the type specified in clause (i), (ii), (iii) or (iv) above, the payment or collection of which such Person has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which such Person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase products or securities, to provide funds for payment, to maintain working capital or other balance sheet conditions or otherwise to assure a creditor against loss, and (vi) all indebtedness or other obligations of any other Person of the type specified in clause (i), (ii), (iii) or (iv) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien, upon or in property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or becomes liable for the payment of such indebtedness or obligations.

"Indemnatee" means the Lessor, the Collateral Agent, the Conduit, the Conduit Agent, the BNS Banks, the BNS Agent, the Liquidity Providers, the Liquidity Agent, the DVB Banks, the DVB Agent, the Swap Counterparty, and each of their respective successors, assigns, directors, officers, employees, Affiliates and agents.

"Initial Permitted Assets" means the assets listed on Schedule 2 to the Lease.

"Insurance Requirements" means all terms and conditions of any insurance policy required by the Lease to be maintained by the Lessee, and all requirements of the issuer of any such policy.

"Interest Period" means, with respect to each Funding, (i) the period commencing on the Funding Date therefor and ending on the next succeeding Scheduled Payment Date and (ii) each successive three-month period thereafter commencing on the immediately preceding Scheduled Payment Date and ending on the succeeding Scheduled Payment Date.

"Interest Rate Hedge" means the ISDA Master Agreement (including any schedule thereto and confirmation thereunder) dated as of the date hereof between the Lessor and the Swap Counterparty.

"Item of Equipment" or "Item" means, with respect to the Initial Permitted Assets, one of the railcars leased to Lessee under the Lease.

"Lease" means the Master Lease and Security Agreement dated as of the date hereof between the Lessor and the Lessee.

"Lease Balance" means (a) with respect to each Leased Asset, as of any date of determination, the sum of all Fundings for such Leased Asset made or deemed made under the Lease on or before such date, less the sum of (i) all Periodic Amortization paid by the Lessee with respect thereto on or before such date and (ii) all proceeds of any Casualty or Condemnation affecting any item of Equipment included in such Leased Asset and all other amounts which in each case have been applied to reduce the Lease Balance for such Leased Asset pursuant to the Lease and (b) with respect to each Item of Equipment, the pro rata portion of the amount in clause (a) allocated to such Item of Equipment.

"Lease Supplement" means, with respect to each Leased Asset, a lease supplement substantially in the form of Exhibit C to the Lease duly completed as to such Leased Asset.

"Lease Term" means, with respect to each Leased Asset, the period commencing on the Acquisition Date for such Leased Asset and ending on the Expiration Date for such Leased Asset.

"Leased Asset" means any Equipment acquired by the Lessor pursuant to the Lease.

"Lender Party" means the Conduit, the BNS Agent, the BNS Banks, the DVB Agent, the DVB Banks, the Liquidity Providers and the Swap Counterparty.

"Lessee" means Entergy Arkansas, Inc., an Arkansas corporation, as lessee under the Lease.

"Lessee's Consent" means the Lessee's Consent dated as of the date hereof among the Lessee, the Lessor and the Collateral Agent.

"Lessor" means BTM Capital Corporation, a Delaware corporation.

"Lessor Lien" means any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against the Lessor not resulting from the transactions contemplated by the Operative Documents, (b) any act or omission of the Lessor which is not required by the Operative Documents or is in violation of any of the terms of the Operative Documents, (c) any claim against the Lessor with respect to Taxes or Transaction Expenses against which Lessee is not required to indemnify Lessor pursuant to the Lease or (d) any claim against the Lessor arising out of any transfer by the Lessor of all or any portion of its interest in any Leased Asset or the Operative Documents other than the transfer of title to or possession of any Leased Asset by the Lessor pursuant to and in accordance with the Operative Documents or pursuant to the exercise of the remedies set forth in the Operative Documents.

"Lessor Margin" means, on any day, the amount per annum set forth in the table below under the heading "Lessor Margin" corresponding to the Credit Rating of the Lessee on such day:

Credit Rating of the Lessee	Lessor Margin (amount in basis points)
1	225.0
2	250.0
3	275.0
4	350.0
5	400.0

provided that if the Credit Rating on any day includes two numbers, then the "Lessor Margin" for such day shall be the mathematical average of the amount per annum set forth in the table above under the heading "Lessor Margin" corresponding to each such number; provided, further that if the Lessee

exercises one or both Renewal Options, then the "Lessor Margin" in the table above shall be reset in accordance with Section 21.1 of the Lease.

"Lessor Portion" means, with respect to any Leased Asset, an amount equal to the portion of the Lease Balance of such Leased Asset funded by the Lessor other than through the borrowing of Loans.

"Lien" means any mortgage, deed of trust, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including any irrevocable license, conditional sale or other title retention agreement, any lease in the nature thereof, or any other right of or arrangement with any creditor to have its claim satisfied out of any specified property or asset with the proceeds therefrom prior to the satisfaction of the claims of the general creditors of the owner thereof, whether or not filed or recorded, or the filing of, or agreement to execute as "debtor", any financing or continuation statement under the Uniform Commercial Code of any jurisdiction or any federal, state or local lien imposed pursuant to any Environmental Law.

"Liquidity Agent" means The Bank of Nova Scotia, in its capacity as administrator and liquidity agent under the Liquidity Agreement.

"Liquidity Agreement" means the Liquidity Asset Purchase Agreement dated as of the date hereof among the Liquidity Providers, the Conduit and the Liquidity Agent.

"Liquidity Providers" means the "Purchasers" as defined in the Liquidity Agreement.

"Loans" means each loan made pursuant to the Loan Agreements.

"Loan Agreements" means the Conduit Loan Agreement, the BNS Loan Agreement and the DVB Loan Agreement.

"Marketing Period" means, with respect to any Leased Asset, if the Lessee has given notice of its exercise of the Remarketing Option for such Leased Asset, the period commencing on the date six (6) months prior to the Expiration Date for such Leased Asset and ending on such Expiration Date.

"Material Adverse Change" means a material adverse change in (i) the financial condition of the Lessee and its Subsidiaries, taken as a whole, or (ii) the ability of the Lessee to pay or perform its obligations under the Operative Documents.

"Memorandum of Lease" means the Memorandum of Lease dated as of the date hereof between the Lessor and the Lessee relating to the Lease, which Memorandum of Lease shall be in form suitable for recordation with the Surface Transportation Board in accordance with 49 CFR 1033.1.

"Monthly Date" means the _____ (___th) day of each calendar month or, if any such day is not a Business Day, the next following day which is a Business Day.

"Moody's" shall mean Moody's Investors Service or any successor in interest that is a nationally recognized rating agency.

"Multiemployer Plan" shall have the meaning assigned to the term "multiemployer plan" in Section 3 (37) of ERISA.

"Operative Documents" means the following:

- (a) the Lease;
- (b) the Lessee's Consent;
- (c) each Lease Supplement;
- (d) the Conduit Loan Agreement;
- (e) the Conduit Note;
- (f) the BNS Loan Agreement;
- (g) the BNS Notes;
- (h) the Liquidity Agreement;
- (i) the DVB Loan Agreement;
- (j) the DVB Notes;
- (k) the Security and Intercreditor Agreement;
- (l) the Memorandum of Lease;
- (m) the Interest Rate Hedge;
- (n) the Fee Letters; and
- (o) each Funding Request.

"Optional Alteration" is defined in Section 13.1 of the Lease.

"Overdue Rate" means the Alternate Base Rate plus the Lessor Margin plus 2.00%.

"Payment Date" means each Scheduled Payment Date and each Additional Payment Date.

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor entity) established under ERISA.

"Periodic Amortization" means, with respect to any period during the Lease Term of any Leased Asset, the amount of amortization specified for such period in the Lease Supplement for such Leased Asset.

"Permitted Assets" means the Initial Permitted Assets and any other assets approved by the Lessor, the Conduit, each BNS Bank, each DVB Bank and each Liquidity Provider.

"Permitted Contest" is defined in Section 15.1(a) of the Lease.

"Permitted Liens" means, with respect to any Leased Asset:

- (i) any rights in favor of the Lessor under the Operative Documents and any rights of any Persons entitled to use of the Equipment in accordance with the Lease;
- (ii) any Lien, claim, security interest or encumbrance (including, without limitation, Liens of landlords, carriers, warehousemen, mechanics or materialmen) in favor of any Person securing payment of the price of goods or services provided in the ordinary course of business for amounts the payment of which is not overdue or is being contested in accordance with the provisions of Section 15.1 of the Lease;

(iii) Lessor Liens; and

(iv) any Lien for current taxes, assessments or other governmental charges which are not delinquent or the validity of which is being contested in accordance with the provisions of Section 15.1 of the Lease.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, governmental authority, limited liability company or any other entity.

"Plan" shall mean (a) with respect to Lessee, any plan described in Section 4021(a) of ERISA and not excluded pursuant to Section 4021(b) thereof, under which Lessee or any ERISA Affiliate of Lessee has any liability, and (b) with respect to any other person, any employee benefit plan or other plan established or maintained by such person for the benefit of such person's employees and to which Title IV of ERISA applies.

"Preferred Stock" means, with respect to any Person, any capital stock of such Person ranking prior, as to dividends and distributions upon liquidation, dissolution or winding up of such Person, to the common stock (or its equivalent) of such Person.

"Premium Amount" means, with respect to any Leased Asset on any date, an amount equal to (i) two percent (2%) of the Lease Balance for such Leased Asset, if such date occurs on or prior to the sixth anniversary of the date of the Lease, or (ii) one percent (1%) of the Lease Balance for such Leased Asset, if such date occurs after the sixth anniversary of the Lease and on or prior to the seventh anniversary of the Lease.

"Purchase Notice" is defined in Section 20.1 of the Lease.

"Purchase Option" is defined in Section 20.1 of the Lease.

"Purchase Option Price" is defined in Section 20.1 of the Lease.

"Release" means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

"Remarketing Option" is defined in Section 22.1 of the Lease.

"Renewal Option" is defined in Section 21.1 of the Lease.

"Renewal Term" is defined in Section 21.1 of the Lease.

"Rent" means, collectively, the Base Rent and the Supplemental Rent, in each case payable under the Lease.

"Reportable Event" has the meaning set forth in Title IV of ERISA.

"Requesting Party" is defined in Section 25.1 of the Lease.

"Required Alteration" is defined in Section 13.1 of the Lease.

"Requirements of Law" means all Federal, state, county, municipal and other governmental statutes, laws (including Environmental Laws), rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting any Leased Asset or the demolition, construction, operation, use or alteration thereof, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to such Leased Asset or in any way limit the use and enjoyment thereof (including all

building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. § 1201 et seq. and any other similar Federal, state or local laws or ordinances and the regulations promulgated thereunder), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto.

"Responsible Employee" means, with respect to any Person, the Chairman, the President, any Vice President, the Controller or the Treasurer of such Person.

"S&P" shall mean Standard & Poor's, a division of McGraw-Hill Companies, or any successor in interest that is a nationally recognized rating agency.

"Scheduled Payment Date" means the Monthly Date in each _____, _____, _____, and _____ occurring after the date of the Lease.

"SEC" means the Securities and Exchange Commission.

"Security and Intercreditor Agreement" means the Security and Intercreditor Agreement dated as of the date hereof between the Lessor and the Collateral Agent.

"Significant Casualty" means (a) a Casualty that results in an insurance settlement with respect to any Item of Equipment on the basis of a total loss or constructive total loss or (b) a Casualty that in the reasonable judgment of the Collateral Agent either (i) renders any Item of Equipment permanently unsuitable for use as an asset of the type contemplated by the Lease or (ii) is such that repair of such Item of Equipment to substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible to effect on or before the Expiration Date for such Item of Equipment.

"Solvent" means, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature and (d) such Person is not engaged in business or in a transaction, and is not about to engage in business or in a transaction, for which such Person's property would constitute unreasonably small capital.

"Subsidiary" means, with respect to any corporation (the "parent"), a corporation or partnership of which the parent, at the time in respect of which such term is used, owns directly, or controls with power to vote, indirectly through one or more Subsidiaries, shares of greater than fifty percent (50%) of its voting capital stock.

"Supplemental Rent" means all amounts, liabilities and obligations (other than Base Rent) which Lessee assumes or agrees to pay to Lessor or any other Person under the Lease or under any of the other Operative Documents.

"Swap Counterparty" means The Bank of Tokyo – Mitsubishi, Ltd. – Capital Markets Group, in its capacity as provider of the Interest Rate Hedge.

"Tangible Net Worth" means, with respect to any Person, _____.

"Taxes" means all U.S. federal, state, local or foreign taxes, levies, fees, imposts, duties, charges, assessments or withholdings of any nature whatsoever including, without limitation, (i) real and personal property taxes, including personal property taxes on any property covered by the Lease that is classified

by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) any excise taxes; (iv) real estate transfer taxes, conveyance taxes, mortgage taxes, intangible taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, gross receipts, privilege and doing business taxes, license and registration fees; and (vi) assessments on any Leased Asset, including all assessments for public improvements or benefits, whether or not such improvements are commenced or completed prior to the Expiration Date for such Leased Asset, and in each case all interest, additions to tax and penalties thereon.

"35 Act" means the Public Utility Holding Company Act of 1935.

"Total Commitment" means \$[80,012,970].

"Total Equity" means, with respect to any Person, _____.

"Total Liabilities" means, with respect to any Person, _____.

"Transaction Expenses" means all costs and expenses incurred in connection with the preparation, execution and delivery of the Operative Documents and the transactions contemplated by the Operative Documents including:

- (a) the reasonable fees, out-of-pocket expenses and disbursements of counsel for each of the Lessor, the Collateral Agent and the Lessee (and, in the case of the Lessee, the reasonable fees, out-of-pocket expenses and disbursements of independent public accountants) in negotiating the terms of the Operative Documents and the other transaction documents, preparing for the closing under, and rendering opinions in connection with, such transactions and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Documents;
- (b) the reasonable fees, out-of-pocket expenses and disbursements of counsel for the Lessor, the Collateral Agent and the other Lender Parties in connection with (1) any amendment, supplement, waiver or consent with respect to any Operative Documents; and (2) any enforcement of any rights or remedies against the Lessee in respect of the Operative Documents;
- (c) any other reasonable fees (including arrangement fees allocated to the Leased Assets), out-of-pocket expenses, disbursements or costs of the Lessor, the Collateral Agent and the other Lender Parties payable to any such party pursuant to any of the Operative Documents;
- (d) any Taxes and fees incurred in recording, registering or filing any Operative Document or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Documents;
- (e) any title fees, premiums and escrow costs and other expenses relating to title insurance and the closings contemplated by the Operative Documents;
- (f) any fees, costs, premiums or expenses incurred in connection with the purchase of any residual value insurance; and
- (g) any expenses relating to an Appraisal

"Uniform Commercial Code" and "UCC" mean the Uniform Commercial Code as in effect in any applicable jurisdiction.

ARK PUBLIC SERV. COMM.
DIANA K. WILSON
SECRETARY OF COMM.
FILED

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION NOV -6 A II: 20

FILED

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-224-U

DIRECT TESTIMONY

OF

STEVEN C. MCNEAL

VICE PRESIDENT AND TREASURER, ENTERGY ARKANSAS, INC.

ENTERGY SERVICES, INC.

ON BEHALF OF

ENTERGY ARKANSAS, INC.

NOVEMBER 6, 2002

1 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND
2 OCCUPATION.

3 A. My name is Steven C. McNeal. I am Vice President and Treasurer of
4 Entergy Corporation and many of its subsidiaries, including Entergy
5 Arkansas, Inc. ("EAI" or the "Company"). My business address is 639
6 Loyola Avenue, New Orleans, Louisiana, 70113.
7

8 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND,
9 PROFESSIONAL QUALIFICATIONS, AND PROFESSIONAL
10 EXPERIENCE.

11 A. I received a Bachelor's of Science degree in Business and History from
12 Trinity University in San Antonio in 1979. I received an M.B.A. from
13 Tulane University in 1981.

14 I began my employment with the Entergy System in January 1982.
15 During the past 20 years, I have held positions of increasing responsibility
16 in Financial Planning, Risk Management, Corporate Finance and
17 Treasury. I was named Vice President and Treasurer in late 1998.

18 In my present position, I am responsible for Corporate Finance,
19 including executing financial strategies, arranging financings, performing
20 financial analysis, managing rating agency relations, managing investment
21 activities, overseeing bank relations and managing financial liabilities. My
22 organization also actively supports rate filings.

23 I have oversight responsibility for the execution of financings for
24 Entergy Corporation's domestic utilities and have executed certain
25 financings for other subsidiaries. As a part of this activity, I have regular
26 dialogue with capital market participants, including lenders, investment

1 bankers and institutional investors. I also maintain an active dialogue with
2 the bond rating agencies on behalf of Entergy Corporation and its
3 subsidiaries.

4
5 Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

6 A. I am testifying on behalf of EAI.

7
8 Q. HAVE YOU EVER TESTIFIED IN A REGULATORY PROCEEDING?

9 A. Yes. I have previously testified before the Arkansas Public Service
10 Commission ("APSC" or the "Commission") in Docket No. 99-234-U and
11 Docket No. 01-221-U related to EAI's request for financing
12 authorization, Docket No. 00-383-U related to EAI's request to transfer
13 transmission assets, and in Docket No. 94-439-U related to the
14 Company's application for approval of the prior railcar lease and related
15 accounting matters. The lease approved in that docket is the predecessor
16 to the lease proposal in this filing. I have also testified in numerous
17 dockets before the Public Utility Commission of Texas, the Louisiana
18 Public Service Commission, the Mississippi Public Service Commission
19 and the City Council of New Orleans.

20
21 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS DOCKET?

22 A. I will support EAI's Application in this Docket. Specifically, I will describe
23 the anticipated transaction related to EAI's lease of aluminum railcars and
24 the advantages of the proposed transaction compared to alternatives.
25 The anticipated form of the lease is similar to the one approved by the
26 Commission in Order No. 4 in Docket No. 94-439-U and is EAI Exhibit A

1 to the Application. For purposes of this testimony, the Synthetic Lease
2 presented in this case is the equivalent of the Hybrid Lease approved in
3 the prior case.
4

5 Q. PLEASE DESCRIBE THE ANTICIPATED TRANSACTION.

6 A. The anticipated transaction is a lease structure the Company has referred
7 to as a Synthetic Lease. It is so named because of its accounting
8 treatment. For book accounting purposes, it is an operating lease.
9 However, for tax purposes, the lessee is treated as the owner of the
10 equipment. The transaction anticipates and includes renewals of the
11 lease under future market terms. Additionally, the transaction includes a
12 possible renegotiation of the lease to allow for an adjustment in the
13 Lessor's debt/equity funding ratio, along with concurrent adjustments.
14 The significant terms and conditions are described in EAI Exhibit SCM-1,
15 "EAI Railcar Financing Summary of Proposed Terms and Conditions."
16 This exhibit shows that this lease provides a structure that has the effect
17 of financing the railcars at an effective interest cost of 3-month London
18 Interbank Offered Rate ("LIBOR") plus 175 basis points, which is swapped
19 to a 7-year fixed rate through an interest rate swap. In the Synthetic
20 Lease, rent expense is composed of fixed rent, which corresponds to an
21 amortization amount, plus variable rent which corresponds to interest on
22 the unamortized balance. The exhibit also shows that the Company has
23 continuous rights upon renewal, termination or return of the equipment
24 without the usual premiums, penalties, or outright prohibition normally
25 associated with a leveraged lease.
26

1 Q. WHY IS THE PROPOSED SYNTHETIC LEASE PREFERABLE TO A
2 TYPICAL LEVERAGED LEASE OR TO THE OUTRIGHT PURCHASE OF
3 THE RAILCARS BY EAI?

4 A. The Synthetic Lease has many of the same elements as a leveraged
5 lease, but with several advantages from both our customers' and the
6 Company's perspectives. Both a Synthetic Lease and Operating or
7 Leveraged Lease structure have a superior net present value as
8 compared to the purchase of the railcars.

9 There are several principles in the anticipated transaction that differ
10 from those offered in a leveraged lease structure. A summary of these
11 differences is shown in EAI Exhibit SCM-2, "Comparison of Terms of a
12 Typical Leveraged Lease and of the Anticipated Synthetic Lease." First,
13 the pricing of a Leveraged Lease is based on long-term rates and is level
14 over the initial term, while the anticipated Synthetic Lease is based on
15 short-term floating rates that have been swapped to a 7-year fixed rate.
16 The rent payments are expected to decline over the life of the transaction
17 as the acquisition cost is amortized through the payment of fixed rent, and
18 therefore interest is computed on a declining balance over time. Second,
19 the Synthetic Lease structure is materially less complicated than a
20 leveraged lease structure, which has the effect of producing lower
21 transaction and administrative costs, such as legal fees. Third, the
22 Synthetic Lease provides for early termination (at the Company's option)
23 without outright prohibitions and/or material economic penalties for doing
24 so (as are usually associated with a typical leveraged lease). This has the
25 effect of providing more flexibility for the Company to take advantage of
26 future opportunities in the capital markets and the railcar transportation

1 market. Finally, one technical difference is that, in a Synthetic Lease, the
2 assumed owner of the railcars for tax purposes is the Company. The
3 lessor is the owner for tax purposes under a Leveraged Lease. Over the
4 life of the project this distinction will produce timing differences but has no
5 material impact.
6

7 Q. WHY DID EAI STRUCTURE THE TRANSACTION IN THIS MANNER?

8 A. As I mentioned in the previous response, the differences between the two
9 lease alternatives are indicated in EAI Exhibit SCM-2. As the legend in
10 that exhibit indicates, the Synthetic Lease's structural advantages clearly
11 exceed those produced by the Leveraged Lease. On balance, the
12 financial decision to structure the railcar transaction as a Synthetic Lease
13 was made because it produces lower cost financing and lower transaction
14 costs. The Direct Testimony of Mr. Jeffrey G. Herndon presents an
15 economic evaluation of the proposed lease compared to the alternatives
16 and demonstrates the advantages of the Synthetic Lease to EAI's
17 customers.
18

19 Q. IS THE LEVEL OF RISK ASSOCIATED WITH THE ANTICIPATED
20 TRANSACTION GREATER THAN THAT EXPECTED WITH A
21 LEVERAGED LEASE?

22 A. No. As I mentioned, the rent associated with a leveraged lease is level
23 over its initial term. In a fixed rate Synthetic Lease, the rent declines with
24 each rental payment as the equipment is amortized.

1 What can be concluded from this information is that the Synthetic
2 Lease produces a rent stream to be charged to the customer that is less
3 expensive than the leveraged lease.

4
5 Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

6 A. Yes.

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-____-U

EAI EXHIBIT SCM-1

EAI RAILCAR FINANCING

SUMMARY OF PROPOSED TERMS AND CONDITIONS

EAI RAILCAR FINANCING
SUMMARY OF PROPOSED TERMS AND CONDITIONS

Equipment: 2,545 Aluminum gondola railcars.

Basic Structure: Synthetic lease. Lease is an off-balance sheet operating lease for book purposes. It is a capital lease for tax purposes.

Lessee: Entergy Arkansas, Inc.

Lessor: BTM Capital Corporation (a subsidiary of The Bank of Tokyo-Mitsubishi) or an affiliate thereof.

Cost: Approximately \$78,000,000 plus transaction costs.

Funding Description: BTM initially will fund its purchase of the equipment with 3% equity and 97% debt, with a liquidity facility provided by a syndicate of banks.

Pricing: Variable component of rent based on 3-month LIBOR rate plus 175 basis points on the unamortized acquisition cost swapped to a 7-year fixed rate of 5.87% (at the time of the proposal). If EAI's unsecured bond credit rating becomes non-investment grade by either Moody's or Standard & Poor's, pricing increases to LIBOR plus 235 basis points swapped to a 7-year fixed rate. (Approximately 6.47% at the time of the proposal)

Closing Cost: \$300,000 fee to BTM on closing; 60 basis points (\$468,000) on closing to the liquidity providers. This cost is being capitalized into the lease.

Lease Term: 7 years -- structured as one 5-year term with two 1-year renewals (at EAI's option).

Amortization:

Straight-line over the 7-year term to a residual value of approximately 55% of cost.

**End-of-Term Options:
(on each anniversary)**

At EAI's option renew, purchase or return the equipment. Purchase or return options require payment of the unamortized acquisition cost. If the cars are sold for more than unamortized acquisition cost, EAI receives that benefit.

**Financial Covenant
or Loss Event:**

EAI will maintain an equity ratio of at least 30%.

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-____-U

EAI EXHIBIT SCM-2
COMPARISON OF TERMS OF A TYPICAL LEVERAGED LEASE
AND OF THE ANTICIPATED SYNTHETIC LEASE

**COMPARISON OF TERMS OF A TYPICAL LEVERAGED LEASE
AND OF THE ANTICIPATED SYNTHETIC LEASE**

	Typcial Leveraged Lease	Synthetic Lease
Cost of Money	Long-term fixed rate (±)	Short-term floating rate swapped to a 7-year fixed rate (±)
Rent Profile	Fixed over 20 years (±)	Declines over 20 years. Estimated to be less than leveraged lease rate after first few years (±)
Complexity	Very complex -- expensive transaction costs (-)	Less complex -- significantly lower transaction costs (+)
Early Termination	Not for at least 12 years (-)	At any time to take advantage of changes in railcar or capital market conditions (+)
Cost of Termination	Uneconomical - debt premiums and rate of return guarantees (-)	Minimal prepayment premiums (+)
Owner of Railcars for Accounting Purposes	Lessor (±)	Lessor (±)
Owner of Railcars for Tax Purposes	Lessor (-)	Lessee (+)
Operating Flexibility	Restrictive (-)	Not as restrictive (+)

Legend: (+) A positive factor
(-) A negative factor
(±) A neutral factor (neither positive nor negative)

ARK PUBLIC SERV. COMM.
DIANA K. WILSON
SECRETARY OF COMM.
FILED

2002 NOV -6 A 11: 19

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-224-U

DIRECT TESTIMONY
OF
JEFFREY G. HERNDON
MANAGER, COAL SUPPLY
ENTERGY SERVICES, INC.

ON BEHALF OF
ENTERGY ARKANSAS, INC

NOVEMBER 6, 2002

1 **I. INTRODUCTION AND BACKGROUND**

2 Q. PLEASE STATE YOUR NAME, BUSINESS AFFILIATION, TITLE AND
3 ADDRESS.

4 A. My name is Jeffrey G. Herndon. I am employed by Entergy Services, Inc.
5 ("ESI") as Manager, Coal Supply in ESI's Energy Management
6 Organization ("EMO"). My business address is Entergy Services, Inc.,
7 10055 Grogans Mill Road, Suite 501, The Woodlands, TX 77380.
8

9 Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

10 A. I am testifying on behalf of Entergy Arkansas, Inc. ("EAI" or the
11 "Company").
12

13 Q. WHAT ARE THE RESPONSIBILITIES OF THE COAL SUPPLY
14 DEPARTMENT?

15 A. The Coal Supply Department is the organization within the EMO that is
16 responsible for purchasing coal, securing the transportation of coal,
17 managing coal inventory, and maintaining the railcar fleets for EAI and
18 Entergy Gulf States, Inc. ("EGSI"), which are the Entergy Operating
19 Companies that own and operate coal-fired generating units.
20

21 Q PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND
22 PROFESSIONAL EXPERIENCE.

23 A. I hold a Bachelor of Science degree in Civil Engineering from the
24 University of Missouri – Rolla. I am a registered professional engineer in
25 the states of Texas, Louisiana (Inactive), and Illinois. From 1976 through
26 1978, I was employed as a field engineer for Peabody Coal Company. In

1 late 1978, I joined System Fuels, Inc. ("SFI"), the fuels subsidiary of the
2 Operating Companies of what was then Middle South Utilities, Inc. (now
3 Entergy Corporation), as an engineer in the Engineering & Technical
4 Support Section. From 1978 until 1996, I held numerous engineering and
5 planning positions within SFI and ESI. My primary responsibilities in all of
6 these positions were to provide engineering, analytical, and technical
7 support to the Coal Supply Group or its predecessors. In 1996, I was
8 transferred to the Coal Supply Group as Senior Engineer. From 1996
9 through 1997, I was given additional responsibilities to actively sublease
10 Entergy Arkansas, Inc.'s fleet of 2,235 steel railcars and pursue early
11 termination of the steel railcar leases. In 1997, I was promoted to Senior
12 Lead Engineer. In October 1999, I was appointed Acting Manager, Coal
13 Supply. In December 1999, I was appointed Manager, Coal Supply.
14 During my entire tenure with Entergy, I have provided analyses and
15 recommendations on coal strategies and negotiations related to the
16 acquisition or transportation of coal.

17
18 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE A REGULATORY
19 COMMISSION?

20 A. Yes. I provided direct and supplemental testimonies in Arkansas Public
21 Service Commission ("APSC" or the "Commission") Docket No. 94-439-U,
22 which was initiated as an application to seek approval for accounting
23 procedures for coal railcar costs. The lease subsequently approved in
24 that docket is the predecessor to the lease proposal in this filing. I have
25 also testified in Public Utility Commission of Texas ("PUCT") Docket Nos.
26 21111 and 23550, which were EGSI fuel reconciliation proceedings, and

1 in PUCT Docket No. 24336, which was EGSI's Price to Beat Fuel Factor
2 filing.
3

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5 A. First, I will describe the status of the current aluminum railcar leases and
6 the need for a new leasing structure similar to the current leasing
7 structure. Next, I will describe the results of two economic evaluations
8 included as EAI Exhibit JGH-1 and EAI Exhibit JGH-2 that demonstrate
9 the economic benefit associated with the proposed railcar lease to EAI's
10 customers as well as the Company. These analyses compared a
11 purchase option, a Synthetic Lease option and an Operating or Leveraged
12 Lease option. The Synthetic Lease option was determined the least cost
13 option. Further, in EAI Exhibit JGH-3, I will present the results of
14 sensitivity studies related to the effect of changes in interest rates on
15 projected fuel cost savings.
16

17 **II. STATUS OF CURRENT RAILCAR LEASES**

18 Q. PLEASE DESCRIBE EAI'S RAILCAR REQUIREMENTS.

19 A. EAI is the principal owner and operator of two coal-fired generating
20 facilities: the White Bluff Steam Electric Station ("White Bluff") and the
21 Independence Steam Electric Station ("ISES"). These two facilities
22 require a total of about 13 million tons of coal per year. This coal is
23 transported by unit trains from mines in the Powder River Basin in
24 Wyoming to the plants, a distance of about 1,350 miles. A total of 2,545
25 railcars are required to transport EAI's total coal requirement of 13 million

1 tons per year at railroad performance standards specified in EAI's coal
2 transportation contracts.

3
4 Q. DESCRIBE THE CURRENT STATUS OF THE ALUMINUM RAILCAR
5 LEASES.

6 A. EAI currently has three leases for aluminum railcars that expire in 2002
7 and thus must be refinanced. The first lease, entered into with BOT
8 Financial Corporation in 1995, covers 2,207 railcars and expired on
9 October 21, 2002. This lease was authorized by the Commission in Order
10 No. 4 in Docket No. 94-439-U and was EAI Exhibit A in the Application.
11 This lease originally included 2,289 railcars but has been reduced to 2,207
12 railcars due to railcar destruction in derailments.

13 The second lease, for 65 railcars, is part of a 120-car trainset
14 leased by EGSI in 1999 from GE Railcar Services Corporation ("GE").
15 These railcars were acquired to replace railcars which were originally
16 included in the BOT lease but have been destroyed in derailments. EAI
17 and EGSI pay proportionate shares of the lease payment based on their
18 use of the railcars. This lease, which will expire at the end of 2002, was
19 entered into by EGSI because it was much more economical to lease an
20 entire trainset than EAI and EGSI each leasing a partial trainset.

21 The third lease, entered into with Johnstown America Corporation
22 in early 2002, covers 273 railcars and expired on October 31, 2002.
23 These railcars were acquired in early 2002 to take advantage of the
24 provisions in the new transportation contract with the Union Pacific
25 Railroad that resulted in significant savings in coal transportation costs,

1 but required an increase in the guarantee cycle-time that results in more
2 railcars needed to maintain the same fleet capacity.

3
4 **III. ECONOMIC EVALUATION OF PROPOSED ALTERNATIVES**

5 Q. PLEASE DESCRIBE THE ECONOMIC EVALUATION THAT WAS
6 PREPARED TO EVALUATE THE ALTERNATIVES FOR FINANCING
7 THE RAILCARS.

8 A. The economic evaluation, which is attached to my testimony as EAI
9 Exhibit JGH-1, was prepared at my request to calculate the costs from a
10 ratepayers' perspective. This evaluation was based on the refinancing
11 cost of 2,480 railcars in the BOT and Johnstown America leases because
12 the GE lease could be either continued or terminated at Entergy's option.
13 Thus a second economic evaluation, which is attached to my testimony as
14 EAI Exhibit JGH-2, was prepared to compare the costs of continuing the
15 GE lease to the cost that would be incurred under the refinancing option of
16 choice. The evaluation for the 2,480 railcars considered three options.
17 The first option was to purchase the railcars. The second option was an
18 operating or leveraged lease with multiple 7-year terms over the 21-year
19 evaluation horizon. The third option considered was a synthetic lease,
20 which the analysis indicated was the lowest-cost option to the ratepayers.
21 The synthetic lease also assumed multiple 7-year terms over the 21-year
22 evaluation horizon. A fourth option considered was based on the use of
23 railroad-supplied railcars. However, this option was rejected as clearly
24 uneconomical. The 21-year horizon was selected because it best
25 represented a reasonable span of time over which to evaluate the lease
26 and ownership scenarios against the railroad-supplied car scenario, while

1 still being well within the economic life expectancy of the railcars. The
2 remaining life expectancy of the railcars as defined by the Association of
3 American Railroads actually well exceeds this evaluation horizon;
4 however, developments in railcar design technology may provide
5 economic incentive to sell and replace the fleet before its maximum life
6 expectancy, such as was the case in 1995 when the original EAI steel
7 railcar fleet was replaced with aluminum railcars.

8 EAI Exhibit JGH-2 provides justification for the additional 65 GE
9 lease cars by comparing the cost of continuing the GE lease to the
10 incremental cost of adding 65 replacement railcars in the refinancing
11 package. That analysis indicated that the incremental cost of adding 65
12 GE replacement railcars in the refinancing package is more economical
13 than continuing the current lease with GE; therefore, the decision was
14 made to include the 65 GE replacement railcars in the refinancing
15 package and terminate the GE lease.

16 As previously discussed, the analysis assumed that 2,545 railcars
17 would be required to deliver coal to the plants. The economic evaluation
18 indicated that the Synthetic Lease, if available through financial
19 institutions, offered the most favorable customer impact, was similar in
20 structure to leasing arrangements previously reviewed and approved by
21 the Commission, would be recovered as fuel expense through the Energy
22 Cost Recovery Rider, and preserved capital.

23
24 Q. WHAT DID THE ECONOMIC EVALUATION INDICATE?

25 A. The analysis demonstrated that the best decision for EAI's customers is to
26 continue the Synthetic Lease approach. The savings to the customer over

1 a 21-year time horizon associated with continuing a synthetic lease is
2 approximately \$24 million versus purchasing the railcars, and \$19 million
3 versus the operating lease.
4

5 Q. IN EVALUATING A PURCHASE VERSUS A LEASE, WHICH FACTORS
6 AFFECTING COSTS WERE IDENTIFIED AS CRITICAL?

7 A. The most critical factor was deemed to be the impact on customer rates
8 because this is what ultimately affects the customer.
9

10 Q. WERE ANY VARIABLES CHANGED IN EVALUATING THE LEASE
11 VERSUS PURCHASE OPTIONS OTHER THAN THE STRUCTURE OF
12 THE DEAL?

13 A. No.
14

15 Q. WAS ANY SENSITIVITY ANALYSIS DONE TO DETERMINE HOW A
16 CHANGE IN INTEREST RATES OVER TIME RELATED TO THE
17 PROPOSED LEASE WOULD AFFECT LEASE COSTS AND THE
18 RESULTING PROJECTIONS OF FUEL COST SAVINGS?

19 A. Yes. The effect on fuel cost savings over time as the result of changes in
20 interest rates was evaluated. Under the current proposal, the lease terms
21 are fixed for 7 years. Therefore, the sensitivity analysis that was
22 performed was based on changes in interest rates in years 8 and beyond.
23 The analysis was performed by increasing interest rates in year 8 and
24 beyond until the net present value ("NPV") of the lease option was
25 equivalent to the purchase option. This analysis indicated that interest
26 rates would have to rise from 5.4 percent to above 19 percent by 2009 (an

1 increase of more than 13.7 percentage points) for the purchase option to
2 be preferred over the synthetic lease. This was not deemed a likely
3 enough outcome to warrant a reconsideration of the results. The final
4 result of this analysis can be seen in EAI Exhibit JGH-3. Because
5 changes in interest rates will affect both synthetic and operating leases
6 consistently, no further sensitivity analyses were performed to analyze
7 variable interest rate changes on the two types of leases.
8

9 Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

10 A. Yes.

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-____-U

EAI EXHIBIT JGH-1
ECONOMIC ANALYSIS OF
ALUMINUM RAILCAR FLEET LEASE

ASSUMPTIONS DOCUMENT
EAI Railcar Analysis

Purchase Railcars Scenario

- EAI purchases the 2,207 railcars in October 2002. [\$64,705,038]
- EAI purchases an additional 273 railcars @ \$38,934/railcar for a total cost of \$10,628,982.
- Book depreciation rate over the first 20 years @ 2.6% and @ 48% the 21st year.
- Utilizes a 7-year MACRS tax depreciation schedule
- Cost of capital assumptions based on EAI capital structure as of 12/31/01.
- Tax rate developed from EAI capital structure - 39.23%
- Annual return on rate base is calculated based on the beginning of the year rate base, and flowed through base rates. O&M and depreciation flow through fuel.
- All purchase payment, O&M expense, and depreciation assumptions developed by Corporate Finance.

Synthetic Lease Railcars Scenario

- EAI enters into synthetic lease agreement to rent/lease the 2,207 railcars as well as additional 273 railcars.
- With synthetic lease, EAI gets depreciation tax benefits.
- EAI makes annual rental/lease payments
- Cost of capital assumptions based on EAI capital structure as of 12/31/01.
- All purchase payment, O&M expense, and depreciation assumptions developed by Corporate Finance.

Operating Lease Railcars Scenario

- EAI enters into an operating lease agreement to rent/lease the 2,207 railcars as well as additional 273 railcars.
- With operating lease, lessor gets depreciation tax benefits.
- EAI makes annual rental/lease payments
- Cost of capital assumptions based on EAI capital structure as of 12/31/01.
- All purchase payment, O&M expense, and depreciation assumptions developed by Corporate Finance.

Railcar Lease vs. Own Analysis Summary

Entergy Arkansas:

Scenario 1 Purchase new railcars, purchase BTM railcars at lease-end.
Scenario 2 Finance new railcars, refinance BTM railcars on synthetic leases.
Scenario 3 Finance new railcars, refinance BTM railcars on operating leases.

Customer Perspective

	Purchase	Synthetic Lease	Operating Lease	Actual WACC
21-year NPV	\$ 125,523,689	\$ 101,106,004	\$ 120,106,430	6.82%

Payments	<u>Customer Effect</u>		
	Arkansas Purchase	Synthetic Lease	Operating Lease
2002	\$ 2,598,245	\$ 2,250,800	\$ 2,966,183
2003	\$ 10,210,805	\$ 9,102,383	\$ 11,864,946
2004	\$ 12,860,821	\$ 11,836,542	\$ 14,467,387
2005	\$ 12,838,765	\$ 11,898,629	\$ 14,374,364
2006	\$ 12,756,739	\$ 11,900,747	\$ 14,204,716
2007	\$ 10,022,823	\$ 9,250,975	\$ 11,383,131
2008	\$ 9,932,142	\$ 9,244,437	\$ 11,204,827
2009	\$ 9,830,910	\$ 8,657,530	\$ 10,449,265
2010	\$ 10,108,327	\$ 7,354,615	\$ 9,028,901
2011	\$ 10,122,565	\$ 7,475,231	\$ 9,032,067
2012	\$ 10,052,954	\$ 7,511,996	\$ 8,951,383
2013	\$ 11,418,264	\$ 8,983,683	\$ 10,305,620
2014	\$ 11,282,097	\$ 8,953,893	\$ 10,158,381
2015	\$ 11,235,889	\$ 9,014,062	\$ 10,101,100
2016	\$ 11,190,991	\$ 8,762,140	\$ 9,744,942
2017	\$ 11,147,422	\$ 7,873,331	\$ 8,791,536
2018	\$ 9,159,234	\$ 6,003,748	\$ 6,857,355
2019	\$ 9,333,517	\$ 6,296,637	\$ 7,085,647
2020	\$ 9,327,141	\$ 6,408,866	\$ 7,133,279
2021	\$ 9,263,628	\$ 6,463,958	\$ 7,123,773
2022	\$ 42,439,656	\$ 20,638,058	\$ 20,638,058
	<u>\$ 247,132,935</u>	<u>\$ 185,882,262</u>	<u>\$ 215,866,861</u>

Railcar Lease vs. Own Analysis
Entergy Arkansas: Scenario 1
Purchase new railcars, purchase BTM railcars at lease-end.

Assumptions:

Depreciation Rate:	2.60%	Ka	10.61%
Tax Rate:	39.23%	WACC	6.82%
D/W	55%	Rev. Requirements	11.22%
Kd	6.05%		

Purchase	
BTM	
Original cost/car:	\$115,720,300.04
Cars:	2207
Lease term:	7 years (10/95-10/02)
Rent/car:	NA
Renewal term:	NA
New rent/car:	NA
Residual value/car:	\$29,318.10
at termination	

Tax Depreciation:	
Year	Rate
1	14.29%
2	24.49%
3	17.49%
4	12.49%
5	8.93%
6	8.93%
7	8.93%
8	4.46%
Total	100.00%

Purchase	
New Cars	
\$38,934.00	
273	
NA	
NA	
NA	
NA	
NA	

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
	BTM			New Cars													
2002																	
2003																	
2004																	
2005																	
2006																	
2007																	
2008																	
2009																	
2010																	
2011																	
2012																	
2013																	
2014																	
2015																	
2016																	
2017																	
2018																	
2019																	
2020																	
2021																	
2022																	

Railcar Lease vs. Own Analysis
Entergy Arkansas: Scenario 2
Finance new railcars, refinance BTM railcars.

Assumptions: Depreciation Rate: 2.60%
 Tax Rate: 39.23%
 WACC: 10.61%
 DV: 55%
 Kd: 6.05%
 Rev. Requirements: 11.22%

Lease		BTM	
Original cost/car:			
Cars:			
Lease term:	2207		
Rent/car:	7 years (10/95-10/02)		
Renewal term:	NA		
New rent/car:	NA		
Residual value/car:	NA		
at termination			
1st Term	7 years	\$64,705,038	
2nd Term	7 years	\$35,587,771	
3rd Term	6 years	\$19,573,274	

Lease		BTM	
New Cars			
Year			
1	273		
2	273		
3	273		
4	273		
5	273		
6	273		
7	273		
8	273		
Total			

Tax Depreciation:		Rate	
Year			
1	14.29%		
2	24.49%		
3	17.49%		
4	12.49%		
5	8.93%		
6	8.93%		
7	8.93%		
8	4.46%		
Total	100.00%		

	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
	BTM		New Cars		O&M		Tax		Payments		Rate		Revenue Requirement		Annual Total
	Rent Payment	Principal Payment	Rent Payment	Purchase Payment	O&M Expense	Payments	Depreciation	Depn Tax Shield on Tax Depr.	Deferred Taxes	Base	Lease + O&M Payments	Book Depreciation	Income Taxes	Return On RB	
2002	\$ 876,753	\$ 1,041,751	\$ 144,023	\$ 171,127	\$ 732,530	\$ 2,966,183	\$ (66,223,920)	\$ (25,973,644)	\$ (25,503,832)	\$ (25,503,832)	\$ 2,966,183	\$ -	\$ -	\$ (715,983)	\$ 2,250,800
2003	\$ 3,450,550	\$ 4,167,004	\$ 596,816	\$ 684,506	\$ 2,986,069	\$ 11,864,946	\$ (2,603,038)	\$ (1,021,172)	\$ 882,076	\$ (21,621,756)	\$ 11,864,946	\$ -	\$ -	\$ (2,762,593)	\$ 9,102,383
2004	\$ 3,224,699	\$ 4,167,004	\$ 529,716	\$ 684,506	\$ 5,881,462	\$ 14,467,387	\$ (1,859,009)	\$ (729,289)	\$ 1,173,959	\$ (23,447,797)	\$ 14,467,387	\$ -	\$ -	\$ (2,630,845)	\$ 11,886,542
2005	\$ 2,998,847	\$ 4,167,004	\$ 492,615	\$ 684,506	\$ 6,031,391	\$ 14,374,364	\$ (1,327,560)	\$ (520,802)	\$ 1,382,446	\$ (22,085,351)	\$ 14,374,364	\$ -	\$ -	\$ (2,475,350)	\$ 11,898,629
2006	\$ 2,772,895	\$ 4,167,004	\$ 455,515	\$ 684,506	\$ 6,124,695	\$ 14,204,716	\$ (949,168)	\$ (372,359)	\$ 1,530,889	\$ (20,534,462)	\$ 14,204,716	\$ -	\$ -	\$ (2,303,969)	\$ 11,900,747
2007	\$ 2,547,144	\$ 4,167,004	\$ 418,415	\$ 684,506	\$ 3,566,062	\$ 11,383,131	\$ (949,168)	\$ (372,359)	\$ 1,531,306	\$ (19,003,156)	\$ 11,383,131	\$ -	\$ -	\$ (2,132,156)	\$ 9,250,975
2008	\$ 2,321,292	\$ 4,167,004	\$ 381,315	\$ 684,506	\$ 3,650,710	\$ 11,204,827	\$ (949,168)	\$ (372,359)	\$ 1,530,889	\$ (17,472,267)	\$ 11,204,827	\$ -	\$ -	\$ (1,960,390)	\$ 8,637,530
2009	\$ 2,095,440	\$ 3,688,216	\$ 344,214	\$ 607,699	\$ 3,703,895	\$ 10,449,265	\$ (474,053)	\$ (185,971)	\$ 1,503,162	\$ (15,969,105)	\$ 10,449,265	\$ -	\$ -	\$ (1,874,286)	\$ 7,475,231
2010	\$ 1,928,857	\$ 2,931,852	\$ 296,445	\$ 376,479	\$ 4,114,863	\$ 9,028,901	\$ -	\$ -	\$ 1,046,786	\$ (13,875,533)	\$ 9,028,901	\$ -	\$ -	\$ (1,791,735)	\$ 6,593,893
2011	\$ 1,804,639	\$ 2,291,852	\$ 276,040	\$ 376,479	\$ 4,326,592	\$ 8,951,383	\$ -	\$ -	\$ 1,046,786	\$ (12,828,747)	\$ 8,951,383	\$ -	\$ -	\$ (1,639,387)	\$ 5,511,946
2012	\$ 1,556,202	\$ 2,291,852	\$ 255,635	\$ 376,479	\$ 5,825,453	\$ 10,305,620	\$ -	\$ -	\$ 1,046,786	\$ (10,735,174)	\$ 10,305,620	\$ -	\$ -	\$ (1,504,488)	\$ 4,903,863
2013	\$ 1,431,984	\$ 2,291,852	\$ 235,229	\$ 376,479	\$ 5,910,179	\$ 10,101,100	\$ -	\$ -	\$ 1,046,786	\$ (9,688,386)	\$ 10,101,100	\$ -	\$ -	\$ (1,382,802)	\$ 4,014,062
2014	\$ 1,307,765	\$ 2,291,852	\$ 214,824	\$ 376,479	\$ 5,998,815	\$ 8,791,536	\$ -	\$ -	\$ 929,023	\$ (8,759,365)	\$ 9,744,942	\$ -	\$ -	\$ (1,260,337)	\$ 3,182,331
2015	\$ 1,183,547	\$ 2,034,019	\$ 194,419	\$ 334,126	\$ 6,088,815	\$ 7,085,647	\$ -	\$ -	\$ 575,732	\$ (8,183,633)	\$ 8,791,536	\$ -	\$ -	\$ (1,148,802)	\$ 2,260,748
2016	\$ 992,551	\$ 1,260,519	\$ 163,045	\$ 207,063	\$ 4,234,177	\$ 7,133,273	\$ -	\$ -	\$ 575,732	\$ (7,607,900)	\$ 7,085,647	\$ -	\$ -	\$ (1,030,748)	\$ 1,382,331
2017	\$ 824,231	\$ 1,260,519	\$ 151,822	\$ 207,063	\$ 4,542,012	\$ 7,133,273	\$ -	\$ -	\$ 575,732	\$ (6,456,435)	\$ 7,133,273	\$ -	\$ -	\$ (924,413)	\$ 629,637
2018	\$ 655,911	\$ 1,260,519	\$ 140,599	\$ 207,063	\$ 4,669,186	\$ 7,133,273	\$ -	\$ -	\$ 575,732	\$ (5,880,703)	\$ 7,133,273	\$ -	\$ -	\$ (818,204)	\$ 560,348
2019	\$ 487,591	\$ 1,260,519	\$ 129,376	\$ 207,063	\$ 4,739,224	\$ 7,133,273	\$ -	\$ -	\$ 575,732	\$ (5,880,703)	\$ 7,133,273	\$ -	\$ -	\$ (724,413)	\$ 498,666
2020	\$ 319,271	\$ 1,260,519	\$ 118,153	\$ 2,115,005	\$ 4,810,313	\$ 20,638,058	\$ -	\$ -	\$ 5,880,703	\$ -	\$ 20,638,058	\$ -	\$ -	\$ (659,815)	\$ 20,638,058
2021	\$ 150,948	\$ 1,260,519	\$ 118,153	\$ 2,115,005	\$ 98,011,948	\$ 215,866,861	\$ -	\$ -	\$ 5,880,703	\$ -	\$ 215,866,861	\$ -	\$ -	\$ (29,984,599)	\$ 165,882,262
2022	\$ 719,271	\$ 12,875,318	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Assumptions:			
Depreciation Rate:	2.60%	Ke	10.61%
Tax Rate:	39.23%	WACC	6.82%
DV	55%	Rev. Requirements	11.22%
Kd	6.05%		

Tax Depreciation:		Rate
Year		
1		0.00%
2		0.00%
3		0.00%
4		0.00%
5		0.00%
6		0.00%
7		0.00%
8		0.00%
Total		0.00%

EAI Exhibit JGH-1
Docket No. 02-____-U
Page 5 of 5

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-____-U

EAI EXHIBIT JGH-2
ECONOMIC ANALYSIS OF INCLUDING
65 ADDITIONAL ALUMINUM RAILCARS

GE Railcar Lease Extension vs. 65-car add-on to Refinancing Package

Year	Months	GE Lease Extended				Refinancing Package Incr Cost (Net)			Savings
		\$/car/mo	\$/car/yr	65 car total	Tax benefit	Net cost	\$/car/mo	\$/car/yr	65 car Net Cost
2003	12	423	5,076	329,940	(129,435)	\$ 200,505	152	1,828	\$ 118,789
2004	12	423	5,076	329,940	(129,435)	\$ 200,505	(7)	(80)	\$ (5,187)
2005	12	423	5,076	329,940	(129,435)	\$ 200,505	89	1,068	\$ 69,388
2006	12	423	5,076	329,940	(129,435)	\$ 200,505	155	1,860	\$ 120,876
2007	12	423	5,076	329,940	(129,435)	\$ 200,505	200	2,396	\$ 155,740
2008	12	423	5,076	329,940	(129,435)	\$ 200,505	192	2,302	\$ 149,625
2009	9	423	3,807	247,455	(97,077)	\$ 150,378	141	1,266	\$ 82,272
Total Savings									
NPV disc.									\$ 661,903
Tax rate									\$ 532,040
									NPV

NOTES:

Analysis period runs January 2003 through September 2009

Assumes GE lease extended 46 months past 12/01/05 termination date at the pre-12/01/05 rate (see calculation below)

Lease package incremental cost based on net after tax depreciation cost calculation per Treasury Dept.

Assumed GE Lease Options at 12/01/05

Extend 46 months at pre-12/01/05 rate	Months	\$/Mo	\$/car
Lease cars thru 12/01/10 at contract rate, store cars 10/01/09	46	423	19,458
	60	362	21,720

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF SYNTHETIC RAILCAR)
LEASE)

DOCKET NO. 02-____-U

EAI EXHIBIT JGH-3
SENSITIVITY ANALYSES OF
INTEREST RATES ON PROJECTED FUEL COST SAVINGS

Customer Perspective (Annual Rate Filing)

	Purchase	Synthetic Lease	Difference
5.4%	\$125,523,689	\$101,106,004	\$24,417,685
7.4%		\$104,684,113	\$20,839,575
9.4%		\$108,262,223	\$17,261,466
11.4%		\$111,840,332	\$13,683,356
13.4%		\$115,418,442	\$10,105,247
15.4%		\$118,996,552	\$6,527,137
17.4%		\$122,574,661	\$2,949,028
19.1%		\$125,523,689	\$0

Interest Rate Difference

13.7%